

**TO PROVIDE FOR ADDITIONAL PROTECTION OF
STEELHEAD TROUT AS A GAME FISH**

HEARING

BEFORE THE

**SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 954

TO PROVIDE FOR ADDITIONAL PROTECTION OF STEELHEAD TROUT AS
A GAME FISH, AND FOR OTHER PURPOSES

JULY 11, 1985, WASHINGTON, DC



5411-2

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TO PROVIDE FOR ADDITIONAL PROTECTION OF STEELHEAD TROUT AS A GAME FISH

THURSDAY, JULY 11, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Slade Gorton (acting chairman) presiding.

Present: Senators Gorton and Abdnor.

Staff present: Peter S. Taylor, staff director; Max Richtman, minority staff director; Deborah Storey, professional staff member; Patricia Zell, Cathy Wilson, and Michael Mahsetky, staff attorneys; Sheila Rogan, legislative assistant; Lynn Toledo, staff assistant; and Irene Herder, staff secretary.

Senator GORTON. This is a hearing on S. 954, a bill to provide additional protection for steelhead trout as a game fish. This bill carries out the request of the citizens of the State of Washington, expressed in their approval of Washington Initiative 456 on November 6, 1984, by a vote of 916,855 to 807,825. Specifically, section 2 of the initiative provides, and I quote:

The people of the State of Washington petition the U.S. Congress to immediately make steelhead trout a national game fish protected under the Black Bass Act.

I strongly believe that, as a Member of Congress from the State of Washington, it is my obligation to respond to the policy expressed by the voters last November. I also feel personally that steelhead, one of the finest sports fish in the world, should be reserved to sportsmen and not commercially netted and sold.

The bill we are considering today would, first of all, decommercialize steelhead trout—that is, it would designate steelhead as a national game fish and make commercial interstate transportation illegal under Federal law. Second, the bill puts all fishermen in the State of Washington on an equal footing, making State laws and regulations governing the harvest, transportation, and sale of steelhead apply to treaty Indian fishermen as they do to everyone else.

I should like to point out that this legislation in no way affects the tribes' treaty rights to fish at their usual and accustomed places, nor their right to engage in the fishery. Furthermore, the bill provides the States with the flexibility to recognize unique or hardship situations that treaty tribes might encounter under the bill. It thus does not impinge on tribes' ceremonial or subsistence fishing for steelhead. The bill also does not address the tribes' right commercially to harvest the far more abundant salmon resource,

or alter their right to obtain a moderate standard of living from their treaty share of salmon.

At this point, without objection, I would like to place a copy of S. 954 into the hearing record.

[The text of S. 954 follows:]

99TH CONGRESS
1ST SESSION

S. 954

To provide for additional protection of steelhead trout as a game fish, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18 (legislative day, APRIL 15), 1985

Mr. GORTON (for himself, Mr. McCURE, and Mr. SYMMS) introduced the following bill, which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To provide for additional protection of steelhead trout as a game fish, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Steelhead Trout Protec-
4 tion Act".

5

FINDINGS AND PURPOSE

6

SEC. 2. (a) The Congress finds and declares that—

7

(1) steelhead trout constitute a valuable and popu-

8

lar recreational fishery resource;

1 (2) the value of steelhead trout to the economy as
2 a game fish is substantially greater than its value as a
3 commercial fish;

4 (3) several States have designated steelhead trout
5 as a game fish, have required that such fish be taken
6 only with sport fishing equipment, and have prohibited
7 the commercial harvest and sale of such fish;

8 (4) United States Federal court decisions affecting
9 the Pacific Northwest, which have interpreted certain
10 treaties with Indian tribes to allow Indian fishermen to
11 harvest and market steelhead trout commercially, have
12 had significant and adverse effects on sport fishing, on
13 the economies of the affected States, and on the ability
14 of the affected States to manage steelhead trout effec-
15 tively and uniformly; and

16 (5) the right to license sportsmen to fish for steel-
17 head trout on Indian lands may well be more valuable
18 to Indian tribes than is a commercial fishery for steel-
19 head trout.

20 (b) It is the purpose of this Act to decommercialize the
21 taking, possession, transportation or sale of steelhead trout,
22 in accordance with the desires of the citizens of the State of
23 Washington, as expressed in the statewide vote of approval
24 of Washington State Initiative 456 on November 6, 1984.

25 DEFINITIONS

26 SEC. 3. As used in this Act, the term—

1 (1) "person" includes any individual, partnership,
2 association, corporation, trust, or any officer, employee,
3 agent, department, or instrumentality of the Federal
4 Government or of any State or political subdivision
5 thereof, or any other entity subject to the jurisdiction
6 of the United States;

7 (2) "State" means any of the several States;

8 (3) "steelhead trout" means the anadromous rain-
9 bow trout species *Salmo gairdneri*, commonly known
10 as steelhead;

11 (4) except for purposes of section 6, "taking"
12 means capturing, killing, or collecting; and

13 (5) "transport" and "transportation" mean to
14 move, convey, carry, or ship by any means, or to de-
15 liver or receive for the purpose of movement, convey-
16 ance, carriage, or shipment.

17 STEELHEAD DECOMMERCIALIZATION

18 SEC. 4. (a) Notwithstanding any Indian treaty or any
19 decision by a court of the United States interpreting Indian
20 tribal fishing rights, the laws and regulations of a State pro-
21 hibiting, restricting, or regulating the taking, possession,
22 transportation, or sale of steelhead trout shall apply to and be
23 enforceable against Indians and Indian tribes fishing at places
24 both within and without the boundaries of an Indian reserva-
25 tion in such State in the same manner and to the same extent
26 as such laws and regulations apply to other persons.

1 (b) The authority provided a State by this section shall
2 be in addition to any jurisdiction to enact and enforce fish and
3 game laws held by that State on the date immediately pre-
4 ceding the date of enactment of this Act. Notwithstanding
5 the provisions of section 401 and 402 of the Act of April 11,
6 1968 (25 U.S.C. 1321 and 1322, respectively), tribal consent
7 is not necessary for a State to assume jurisdiction under this
8 section.

9 (c) To the extent necessary for the purposes of this sec-
10 tion, the rights of Indian tribes and members of such tribes to
11 take, possess, transport, or sell steelhead trout within or
12 without the boundaries of an Indian reservation are terminat-
13 ed or modified.

14 ENFORCEMENT AUTHORITY

15 SEC. 5. (a) An Indian tribe may require any person fish-
16 ing, or wishing to fish, for steelhead trout on the tribe's
17 Indian trust land or in waters within the exterior boundaries
18 of the tribe's reservation to obtain a license from any pay fees
19 to such tribe. A tribe may prescribe such conditions for the
20 issuance of such a license as it determines to be necessary
21 and appropriate for the sound operation of such licensing
22 system.

23 (b) Any requirements imposed under this section shall be
24 in addition to applicable State license requirements, except
25 that no State may require a member of an Indian tribe to
26 obtain a license from, or pay fees to, the State in order to fish

1 on the tribe's Indian trust land, in waters within the exterior
2 boundaries of the tribe's reservation, or at usual and accus-
3 tomed fishing grounds of such tribe.

4 (c) Except as provided in subsection (a) of this section,
5 an Indian tribe may not regulate the taking, possession,
6 transportation, or sale of steelhead trout in a manner which is
7 inconsistent with State law and regulations.

8 (d) It is unlawful for any person to violate any licensing
9 requirement or condition that applies to such person which
10 may be prescribed by an Indian tribe pursuant to subsection
11 (a) of this section.

12 (e) The Secretary of the Interior shall enforce the provi-
13 sions of subsection (d) of this section, except that enforcement
14 personnel of an Indian tribe may—

15 (1) arrest any person, if there is reasonable cause
16 to believe that such person has committed an act pro-
17 hibited by the tribe pursuant to subsection (a) of this
18 section;

19 (2) seize any fishing vessel or fishing gear which
20 reasonably appears to have been used or employed in
21 the violation of a requirement prescribed by the tribe
22 pursuant to subsection (a) of this section;

23 (3) seize any fish taken or possessed in violation
24 of a requirement prescribed by the tribe pursuant to
25 subsection (a) of this section; and

1 (4) seize any other evidence related to any viola-
2 tion of any requirement prescribed by the tribe pursu-
3 ant to subsection (a) of this section.

4 (f)(1) Any person who is found by the Secretary of the
5 Interior, after notice and an opportunity for a hearing in ac-
6 cordance with section 554 of title 5, United States Code, to
7 have committed an act prohibited by subsection (d) of this
8 section shall be liable to the United States for a civil penalty.
9 The amount of the civil penalty shall not exceed \$1,000 for
10 each violation. Each day of a continuing violation shall con-
11 stitute a separate offense. The amount of such civil penalty
12 shall be assessed by the Secretary, or the Secretary's desig-
13 nee, by written notice. In determining the amount of such
14 penalty, the Secretary shall take into account the nature, cir-
15 cumstances, extent, and gravity of the prohibited acts com-
16 mitted and, with respect to the violator, the degree of culpa-
17 bility, history of prior offenses, ability to pay, and such other
18 matters as justice may require.

19 (2) Any person against whom a civil penalty is assessed
20 under paragraph (1) of this subsection may obtain review of
21 such assessment in the appropriate court of the United States
22 by filing a notice of appeal in such court within thirty days
23 from the date of such order. Such person shall simultaneously
24 send a copy of such notice by certified mail to the Secretary.
25 The Secretary shall promptly file in such court a certified

1 copy of the record upon which such violation was found or
2 such penalty imposed, as provided in section 2112 of title 28,
3 United States Code. The findings and order of the Secretary
4 shall be set aside by such court only if they are not found to
5 be supported by substantial evidence, as provided in section
6 706(2) of title 5, United States Code.

7

COMPENSATION

8 SEC. 6. The United States Claims Court shall have ex-
9 clusive jurisdiction to receive, hear, determine, and render
10 final judgment on all causes of action which seek compensa-
11 tion for an alleged taking of Indian treaty rights arising under
12 or growing out of this Act. Such a claim must be filed in the
13 United States Claims Court within three years of the date of
14 enactment of this Act. Such a claim may be filed only by an
15 affected Indian treaty tribe. In considering the value of such
16 a claim for compensation, the United States Claims Court
17 shall reduce the value of any right to a steelhead trout com-
18 mercial fishery by the value of the right to license a steelhead
19 trout sport fishery.

○

Senator GORTON. Today we will receive testimony from two of our colleagues, from the Department of the Interior, and from many others who have a vital interest in this legislation. We do have a number of statements for the record. At this point I won't list all of them but each of them, from the State of Washington and from a number of others, will be included in the record as if read in full.

We have listed two Senate colleagues as witnesses. Senator Evans is here. Senator McClure is not at this point so, Dan, we will start with you.

**STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM
THE STATE OF WASHINGTON**

Senator EVANS. Thank you, Mr. Chairman. It is a privilege to come before this committee and to speak on an issue which is of extreme importance, not only to the State of Washington but I think to a much larger area of this country. We have different interests, different concerns, and I think that there are different ways to achieve the result that everyone seeks, which is a sufficient fishery to all those who seek the steelhead trout.

Mr. Chairman, I will excerpt parts of my testimony and ask that the complete statement be placed in the record of the committee.

Senator GORTON. Without objection, the whole statement will be.

Senator EVANS. Mr. Chairman, few species of fish or wildlife have generated as much controversy as the steelhead trout. Over the years, sportsmen have made several unsuccessful attempts to congressionally end Indian treaty rights to steelhead. The Indian tribes of Washington State, economically and socially dependent on the steelhead resource, have resisted strongly these efforts to limit their treaty fishing rights.

Steelhead fishing brings to mind two very different images: A sportsman struggles waist deep in an ice-cold, swift-flowing stream, feeling a strike and the raw excitement as a steelhead charges downstream against a lightweight line. An Indian fisherman stands on a precarious wooden platform, the river churning and boiling below, poised with dip net in hand to capture the great fish as it leaps from the water in a desperate attempt somehow to reach its spawning ground.

The emotional attachment of both to this powerful, swift-moving fish is great. For the sportsman, the steelhead represents one of the strongest challenges to his mastery over nature—a great escape from today's fast-paced technological society. For the Indian the steelhead is a window to the past, a link to his cultural and spiritual heritage. The sportsman depends on the steelhead for excitement and adventure; the Indian fisherman for sustenance and economic livelihood. Both lay claim to the great steelhead trout. Both claims are legitimate and both should be protected.

I share the concerns of my fellow citizens of Washington State over the fate of the steelhead resource. Until recently, all anadromous fish resources were in decline. The construction of hydroelectric dams on Pacific Northwest rivers and streams caused a great decline in anadromous fish resources; so has careless timber harvesting and residential and commercial development; so has the

lack of adequately funded management and conservation programs, and overfishing at certain times and certain places.

In recent years, however, we have begun to restore the salmon and steelhead runs. Hatchery production has increased dramatically. The State of Washington has enacted the strongest State forest practices act in the Nation to help protect water quality. Tough shorelines management and State environmental policy acts help protect fish habitat. The Northwest Power Act has led to aggressive programs to protect, mitigate, and enhance fishery resources. Importantly, Federal and State and tribal cooperative efforts have led to dramatic improvements in stream and harvest management.

Last year, fisheries managers reported the largest steelhead runs in recorded history. Returns to the Columbia River system in 1984 were almost twice the average of the previous 5 years. Likewise, Puget Sound and coastal streams last year were at record levels. All indications are that 1985 runs will be as strong. The great irony of the effort to decommercialize steelhead is that it comes at a time when the steelhead resource is at its strongest and growing.

Decommercialization of steelhead would effectively abrogate Indian treaty rights to catch steelhead trout for commercial purposes. That right was reserved by treaties signed by Indian tribes in Washington and territorial Governor Isaac Stevens in 1854 and 1855. The right to a commercial harvest was more explicitly recognized by the U.S. Supreme Court in *United States v. Washington*.

Now without question Congress may abrogate the provisions of an Indian treaty, just as we might unilaterally abrogate any treaty in which we are engaged, but Congress may not take the property of Indians without paying just compensation under the U.S. Constitution. Fishing rights in particular have been found to be a form of compensable property. Consequently, should Congress decide to abrogate Indian treaty rights to catch steelhead, the Federal Government would have to pay compensation to the Indian tribes for the loss of the right to commercial harvest.

Now, to be sure, decommercialization would cause a reduction in the amount of steelhead caught by Indian fishermen. In 1983 and 1984, for instance, after subtracting for ceremonial and subsistence fishing, the Indian commercial steelhead catch was approximately 62,000 fish. However, decommercialization will not add a single fish to the resource. In fact, decommercialization may lead to its decline. Total hatchery production of steelhead could decline by as much as 30 percent if Indian hatcheries are closed or converted to salmon production. Furthermore, decommercialization could very well end the cooperative efforts of the State of Washington and the tribes to manage salmon and steelhead.

Mr. Chairman, the economic value, however, of steelhead fishing doesn't begin to measure the full socioeconomic costs of decommercialization. Most tribes in Washington have unemployment rates over 60 percent. Employment opportunities on the reservation are few, particularly in winter months. Decommercialization would lead to further unemployment, since tribal members would have nowhere else to turn for jobs.

Furthermore, Indians in the Northwest consider fishing an ancient and a God-given right. The loss of this intensely guarded

right would be inestimable. The feelings of Indians in this regard are difficult for those of us who do not share them to understand.

Now initiative 456 was a message to Congress of concern for the fate of the steelhead resource. I share that concern and feel that we should respond to it, but it is possible to increase the non-Indian share of steelhead by increasing the runs through mitigation and enhancement measures, rather than merely reallocating fish currently in the rivers. Mitigation and enhancement measures are more cost-effective than decommercialization and more beneficial to all user groups.

Mr. Chairman, a new spirit of cooperation now pervades steelhead management. Last year was the first in 10 years in which the steelhead season was unclouded by litigation. The State, the Federal Government, and the tribes are now working together to establish catch limits, to survey and rehabilitate habitat, and to gather the information necessary to further improve the runs. It is in large part because of this cooperative management that steelhead runs are now as healthy as they are.

Steelhead runs in the Northwest are on the upswing, but much work does remain to be done. Together, we can bring steelhead back to the rivers in numbers never before thought possible. We can all share the fruits of these labors. We can all benefit from these efforts, or we can fail by merely seeing who can catch the last of a dying breed.

Now it falls to this generation, working together, to rebuild what was once almost destroyed. If we can accomplish this task, we can leave to future generations a revitalized national resource and we can leave to them a legacy of cooperation for which we will always be proud.

Mr. Chairman, I would be delighted to respond to any questions.

Senator GORTON. Thank you very much, Dan, for a most eloquent statement, which will be included in the record. I have no questions, and we are simply delighted to have had you here.

Senator EVANS. Thank you, Mr. Chairman.

[The prepared statement of Senator Evans appears followed by statements of Senator McClure and Senator Symms:]

TESTIMONY OF SENATOR DANIEL J. EVANS
ON S. 954 BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
JULY 11, 1985

MR. CHAIRMAN, AND MEMBERS OF THE SELECT COMMITTEE:

Few species of fish or wildlife have generated as much controversy as the steelhead trout. Over the years, sportsmen have made several unsuccessful attempts to congressionally end Indian treaty rights to steelhead. The Indian tribes of Washington State, economically and socially dependent on the steelhead resource, have resisted strongly these efforts to limit their treaty fishing rights.

Steelhead fishing brings to mind two very different images: a sportsman struggles waist deep in an ice-cold, swift-flowing stream. He feels a strike, and raw excitement as the steelhead charges downstream against a light-weight line. An Indian fisherman stands on a precarious wooden platform, the river churning and boiling below. He is poised with dipnet in hand to capture the great fish as it leaps from the water in a desperate attempt somehow to reach its spawning ground. The emotional attachment of both to this powerful, swift-moving fish is great. For the sportsman the steelhead represents one of the strongest challenges to his mastery over nature - a

great escape from today's fast-paced, technological society. For the Indian the steelhead is a window to the past - a link to his cultural and spiritual heritage. The sportsman depends on the steelhead for excitement and adventure, the Indian fisherman for sustenance and economic livelihood. Both lay claim to the great steelhead trout - both claims are legitimate and should be protected.

I share the concerns of my fellow citizens of Washington State over the fate of the steelhead resource. Until recently, all anadromous fish resources were in decline. The construction of hydroelectric dams on Pacific Northwest rivers and streams caused a great decline in anadromous fish resources. So has careless timber harvesting and residential and commercial development. So has the lack of adequately funded management and conservation programs, and overfishing at certain times and places.

In recent years, however, we have begun to restore the salmon and steelhead runs. Hatchery production has increased dramatically. The State of Washington has enacted the strongest state forest practices act in the nation to help protect water quality. Tough shorelines management and state environmental policy acts help protect fish habitat. The Northwest Power Act has led to aggressive programs to protect, mitigate and enhance fishery resources. Importantly, federal and state and tribal cooperative efforts have led to dramatic improvements in stream and harvest management.

Last year, fishery managers reported the largest steelhead runs in recorded history. Returns to the Columbia River system in 1984 were almost twice the average of the previous five years. Likewise, Puget Sound and coastal streams last year were at record levels. All indications are that 1985 runs will be as strong. The great irony of the effort to decommercialize steelhead is that it comes at a time when the steelhead resource is at its strongest.

Decommercialization of steelhead would effectively abrogate Indian treaty rights to catch steelhead trout for commercial purposes. That right was reserved by treaties signed by Indian tribes in Washington and territorial Governor Isaac Stevens in 1854 and 1855. The right to a commercial harvest was explicitly recognized by the U.S. Supreme Court in United States v. Washington.

Without question Congress may abrogate the provisions of an Indian treaty. But Congress may not take the property of Indians without paying just compensation under the U.S. Constitution. Fishing rights in particular have been found to be a form of compensable property. Consequently, should Congress decide to abrogate Indian treaty rights to catch steelhead, the Federal Government would have to pay compensation to the Indian tribes for the loss of the treaty right to commercial harvest.

Mr. Chairman, members of the Select Committee, decommercialization would be expensive and financially counterproductive. The estimated commercial value of the

steelhead catch to Indian fishermen is approximately \$1.5 million annually. Indian hatchery facilities account for almost 30 percent of hatchery production of steelhead. Together, the loss of Indian hatchery production and the cost of compensating the tribes for the value of the commercial catch represent the cost of abrogating treaty rights to commercial steelhead fishing. To give some perspective, the expenditures of Indian tribes on hatchery production and compensation for the commercial value of the treaty right to catch steelhead represent a cost roughly equivalent to the cost of the entire Washington State steelhead hatchery program, including all federal contributions to the program.

To be sure, decommercialization of steelhead would cause a reduction in the amount of steelhead caught by Indian fishermen. In 1983-84 for example, after subtracting for ceremonial and subsistence fishing, the Indian commercial steelhead catch was approximately 62,000 fish.

But decommercialization will not add a single fish to the resource. In fact, decommercialization may lead to its decline. Total hatchery production of steelhead would decline by as much as 30 percent as Indian hatchery facilities would be converted to salmon production or closed altogether.

Furthermore, decommercialization could very well end the cooperative efforts of the State of Washington and the tribes to manage salmon and steelhead. One example of the cooperative efforts of Indian and non-Indian fishery managers was described in a U.S Fish and Wildlife Service report on

anadromous fish restoration activities. The Chehalis Indian tribe assisted in a spawning ground survey on the Chehalis River, and

"after several days of orientation, shared a large part of our routine survey work. This made it possible to cooperatively survey many previously unexamined areas. As a result, we discovered several miles of previously unsurveyed habitat. ... In the future, the Chehalis Tribe anticipates continuing spawner surveys in the index areas we cooperatively established."

Mr. Chairman, the economic value of steelhead fishing doesn't begin to measure the full socio-economic costs of decommercialization.

Most tribes in Washington have unemployment rates over 60 percent. Employment opportunities on the reservation are few, particularly in the winter months. Decommercialization would lead to further unemployment since tribal members would have nowhere else to turn for jobs.

Furthermore, Indians in the Northwest consider fishing an ancient, God-given right. The loss of this intensely-guarded right would be inestimable. The feelings of Indians in this regard are difficult for those of us who do not share them to understand. I can do no better in describing them than did Meninock, a leader of the Yakima Indian Nation some 70 years ago:

"God created this Indian country and it was like He spread out a big blanket. He put the Indians on it. They

were created here in this country ... and that was the time this river started to run. Then God created fish in this river and put deer in these mountains and made laws through which has come the increase of fish and game. Then the Creator gave us Indians life; we awakened and as soon as we saw the game and fish we knew that they were made for us. ... My strength is from the fish; my blood is from the fish, from the roots and the berries. The fish and the game are the essence of my life. ... We never thought we would be troubled about these things, and I tell my people ... it is not wrong for us to get this food. Whenever the seasons open I raise my heart in thanks to the Creator for his bounty that this food has come."

Initiative 456 was a message to Congress of concern for the fate of the steelhead resource. I share that concern, and feel we should respond to it. But it is possible to increase the non-Indian share of steelhead by increasing the runs through mitigation and enhancement measures rather than real-locating the fish currently in the rivers. Mitigation and enhancement measures are more cost-effective than decommmercialization, and more beneficial to all user-groups.

Mr. Chairman, a new spirit of cooperation now pervades steelhead management. Last year was the first in ten years in which the steelhead season was unclouded by litigation. The State, the Federal Government, and the tribes are now working together to establish catch limits, to survey

and rehabilitate habitat, and to gather the information necessary to improve further the runs. It is in large part because of this cooperative management that steelhead runs are as healthy as they now are.

Steelhead runs in the Pacific Northwest are on the upswing. But much work remains to be done. Together, we can bring steelhead back to the rivers in numbers never before thought possible. We can all share the fruits of these labors, we can all benefit from these efforts. It falls to this generation, working together, to rebuild what was almost destroyed. If we can accomplish this task, we can leave to future generations a revitalized natural resource. And we can leave to them a legacy of cooperation for which we will always be proud.

STATEMENT OF SENATOR JAMES A. McCLURE
THE COMMITTEE ON INDIAN AFFAIRS

MR. CHAIRMAN, I am pleased to speak today in support of S. 954. The bill to decommercialize the taking, possession, transportation, or sale of steelhead trout. This bill will make the laws governing the taking and sale of steelhead trout applicable to all Americans on an equal basis.

The migration of the steelhead is one of nature's greatest mysteries that modern man has yet to fully understand. With a four year life cycle, the steelhead spawn throughout the Columbia River System and its tributaries. The fish swim downstream to the Pacific Ocean, where they spend two years feeding in the marine rich environment, sometimes reaching over 30 pounds. Upon reaching maturity, the steelhead begins the trek to its birth place to spawn and begin the cycle anew.

However, some never reach the end of their journey. Many die along the way due to disease, predation, difficulty in migration and sport and commercial fishing. During the past decade the steelhead population has declined significantly. Through efforts by the Washington, Oregon, and Idaho delegations and others a successful hatchery program has been instituted along the Columbia and its tributaries. Massive programs to make the

migration of the steelhead possible are being carried out by various agencies. Sport fishing for these steelhead trout have been eliminated or limited due to low fish numbers. The sport fisherman in Idaho and other northwestern states have complied with strict regulations regarding the number of steelhead that may be taken from the Columbia River System.

Despite these tough measures we still face an escapement problem in Idaho waters. The steelhead are not returning in sufficient numbers. There are various arguments concerning who is to blame for this mismanagement. This bill is an attempt to focus all this controversy surrounding these issues into an arena where the truth may be drawn out and a cooperative decision can be made. We must bring about equality of the law. All groups must be restrained equally. No one may be allowed to misuse the resource. This bill will benefit all people of Idaho as well as all Americans and insure the proper management of a valuable resource.

In closing, let me reiterate, steelhead are important to all Idahoans. All parties are interested in managing this valuable resource. In order that all may share the resource, we must work as co-managers.

STATEMENT BY SENATOR STEVE SYMMS ON

S. 954

BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS

JULY 11, 1985

AS AN ORIGINAL CO-SPONSOR OF S-954, I'M PROUD TO SUPPORT IT HERE TODAY. THIS LEGISLATION IS IMPORTANT TO THE PEOPLE OF MY STATE. WE IDAHOANS HAVE A MAJOR INVESTMENT IN THESE STEELHEAD. IT'S ESTIMATED THAT FULLY HALF OF THE COLUMBIA RIVER STEELHEAD ARE HATCHED IN IDAHO. ABOUT 1/3 OF THE TOTAL NUMBER ARE REARED IN IDAHO HATCHERIES. BECAUSE OF THIS, THESE FISH REPRESENT SIGNIFICANT COSTS TO THE STATE OF IDAHO. IN ADDITION TO THE OBVIOUS COSTS OF MANAGING THE HATCHERIES, PATROLLING THE STREAMS, ENFORCING REGULATIONS, ETC., THERE ARE INDIRECT COSTS THAT ARE OFTEN UNRECOGNIZED, PRIMARILY THE COST OF OTHER RESOURCE VALUES FOREGONE. AMONG THESE ARE CURTAILMENT OF GRAZING AND TIMBER HARVESTING TO ASSURE MAINTENANCE OF HIGH-QUALITY FISH HABITAT. IN SOMEWHAT THE SAME CATEGORY THAT MUST BE COUNTED AS LOSS IS THE POTENTIAL BUSINESS THAT WOULD BE GENERATED BY ADDITIONAL SPORTSMEN IF THE STEELHEAD RUNS WERE LARGER.

OUR STEELHEAD RUNS HAVE BEEN BUILDING FROM A LOW OF 16,000 IN 1975 AT LOWER GRANITE DAM, TO A HIGH LAST YEAR, AT THIS SAME POINT, OF 91,000 FISH. THIS BUILDUP HAS BEEN POSSIBLE PARTLY BECAUSE OF A VERY SUCCESSFUL HATCHERY PROGRAM, REDUCTIONS IN

SPORT FISHING AND GENERAL COOPERATION AMONG THE AFFECTED STATES. THE NUMBERS CITED ARE ONLY A FRACTION OF THE TOTAL STEELHEAD RUN, OF COURSE. THE TOTAL 1984 RUN HAS BEEN ESTIMATED AT 315,000. IN SHARP CONTRAST THE 1984 IDAHO HARVEST IS ESTIMATED AT 12,000 FISH. I THINK IT'S UNDERSTANDABLE THAT MANY IDAHO SPORT FISHERMEN FEEL SOMEWHAT SHORT-CHANGED. AFTER ALL, IF IDAHO CONTRIBUTES HALF OF THE BREEDING STOCK, SHOULDN'T IDAHO SPORTSMEN BE ALLOWED TO CATCH MORE THAN 4% OF THE FISH? WHAT'S MORE, IN SOME YEARS, BECAUSE OF INADEQUATE RETURNS FROM THE OCEAN, NO SPORT FISHING HAS BEEN ALLOWED AT ALL.

THE STEELHEAD FACE A REAL BATTLE TO SURVIVE. SOME OF THEIR HANDICAPS ARE UNAVOIDABLE. UNDOUBTEDLY THE GREATEST CAUSE OF MORTALITY IS THE SERIES OF DOWNSTREAM DAMS. OTHER LOSSES RESULT FROM DEEP-SEA COMMERCIAL FISHING, PREDATION, AND DISEASE. BUT, A MAJOR PROBLEM WHICH THIS BILL ADDRESSES IS THE INLAND COMMERCIAL FISHING. THE EVIDENCE AVAILABLE INDICATES THAT THE COMMERCIAL INDIAN FISHERY TAKES A HEAVY TOLL OF THE TOTAL RUN. WHILE THE IMPACT IS NOT PRECISELY KNOWN, THE IDAHO DEPARTMENT OF FISH AND GAME ESTIMATES THAT 71,000 FISH WERE TAKEN BY THE TREATY TRIBES IN 1984--IN CONTRAST TO 12,000 FISH TAKEN BY SPORTSMEN IN IDAHO.

TREATY TRIBES HAVE SPECIAL FISHING RIGHTS QUARANTEED. HOWEVER, I'M NOT CERTAIN THAT COMMERCIAL FISHING WAS INTENDED OR ENVISIONED WHEN THE TREATIES WERE RATIFIED. I'M CERTAIN THAT, UNDER PRESENT CIRCUMSTANCES, COMMERCIAL STEELHEAD FISHING IS NOT IN THE BEST INTERESTS OF THE PUBLIC OR THE FISH. STEPS NEED TO

BE TAKEN NOW TO ENSURE A VIABLE, HEALTHY STEELHEAD RUN WHILE ALLOWING UTILIZATION OF THIS RESOURCE BY ALL PARTIES.

S. 954 GRANTS THE TREATY TRIBES THE RIGHT TO CONTROL FISHING ON TRIBAL LAND, WHICH TO SOME EXTENT WILL COMPENSATE FOR THE LOSS OF INCOME FROM COMMERCIAL FISHING.

IN SUMMARY, I THINK THIS IS GOOD LEGISLATION AND FULLY SUPPORT ITS PASSAGE.

Senator GORTON. Senator McClure's staff has stated that he will be here. He is not at this point, so we will start with panel one. We will have to apologize to you witnesses that if the other Senator comes, we may have to interrupt you, but the first panel will represent the Department of the Interior, Mr. Kutkuhn and Mr. Rankel. Gentlemen, you may proceed.

STATEMENT OF JOSEPH KUTKUHN, ASSOCIATE DIRECTOR FOR FISHERY RESOURCES, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY GARY L. RANKEL, CHIEF, FISH, WILDLIFE, AND RECREATION, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. KUTKUHN. Mr. Chairman and respected committee members, good morning. I very much appreciate this opportunity to represent the views of the Department of the Interior on S. 954, the Steelhead Trout Protection Act. I plan to make an abbreviated or excerpted version of my full statement, and provide that one for the record.

Senator GORTON. Yes; your entire statement will appear in the record.

Mr. KUTKUHN. Thank you.

Fundamentally, we cannot support the enactment of S. 954, and, in fact, oppose it for the basic reasons we couldn't support its predecessor in 1981. Before summarizing the reasons for our opposition, I believe it would be useful to point out that the steelhead resources of the Pacific Northwest have improved dramatically over the last 4 years, the recent Washington State Initiative notwithstanding.

As you may know, the 1984-85 winter steelhead season in the Pacific Northwest was one of the best in recent years. Total catch in western Washington waters may have been the greatest since 1971-72. Streams fished by tribes during 1984-85 accommodated some of the largest returning steelhead runs in recent memory, and it should be recognized that the large returns to Puget Sound river systems, the Columbia River, and Washington coastal drainages were in part a result of tribal management.

Excellent cooperation between the Washington Department of Game and tribal biologists resulted in harvest and escapement agreements before the winter season started, and no court hearing or fishery advisory board meeting was necessary to settle disputes during the course of the season. In the past, midseason conflicts often resulted in sudden openings and closings of both tribal and sport fishing seasons. The protection of wild spawners by early stream closures and other restrictions, the targeting of tribal fisheries primarily on hatchery runs, together with other cooperative management activities, have helped to boost runs of wild steelhead in many river systems. Steelhead counts at Bonneville Dam on the Columbia River in 1984 were among the highest since Bonneville was constructed in 1937.

Tribal hatcheries in western Washington released approximately 1.7 million steelhead in 1984, along with approximately 26 million salmon. In 1983, releases of steelhead from these hatcheries constituted 25 percent of total steelhead releases in western Washington.

With funding support from the Federal Government, salmon and steelhead releases from tribal hatcheries have increased significantly in recent years. In all, one has to be impressed by what has been accomplished for the steelhead trout by all parties working together cooperatively in recent years.

The proposed legislation, rather than resolving fishery or fishing controversies, we feel is contrary to the spirit of the 1979 U.S. Supreme Court opinion which upheld the *Boldt* decision; would subject the United States to a claim of just compensation under the fifth amendment; and would lead to protracted, expensive, and complex litigation that could result in substantial money judgments against the United States. The legislation would also undermine the Salmon and Steelhead Conservation and Enhancement Act of 1980, which Congress enacted as a mechanism for increasing tribal/State cooperation on fishery matters while preserving Indian treaty commitments, as well as protecting the resource.

Since the issues addressed by the legislation do not appear to deal with biological or environmental protection for the steelhead, this legislation would jeopardize the cooperative relationship between State and tribal biologists, and result in the termination of numerous tribal efforts directed toward steelhead management and enhancement. More than ever, cooperation between State and tribal biologists is required to continue restoration efforts and develop appropriate harvest management policy. We are hopeful that such continued cooperation, coupled with the aggressive hatchery production programs conducted by all parties, including the treaty tribes, will contribute significantly to future steelhead enhancement.

We believe, moreover, that designation of the steelhead as a game fish can be achieved, where appropriate, on an individual basis through agreements between a State and the affected tribes. The Columbia River treaty tribes, for example, agreed under a 5-year management plan approved by a U.S. district court to limit the taking of steelhead through time and location restrictions involving gill netting of salmon. In return, the States and Federal Government have worked to improve the runs of all anadromous fish.

In summary, we cannot support what to us amounts to the abrogation of treaty rights, the overriding of Federal court decisions, or the invalidation of present comanagement agreements and other cooperative efforts among the tribes, States, and Federal Government, in favor of the steelhead trout's use by just one interest group.

In further summary, I would like to reiterate the reasons that the Department feels it needs to oppose this proposed legislation. First, it deals with only an allocation rather than a conservation issue. It would have the effect of abrogating treaties and denying the rights so reserved. It would override some court decisions. It would invalidate agreements that had been made in the interim. It would nullify progress in cooperative management that has been significant, as I have indicated. It would undermine the intent of the Salmon and Steelhead Conservation and Enhancement Act, would lead to more litigation and, in the interim, would possibly jeopardize the resources in question.

I think it is well to summarize, also, some of the highlights of the evolving cooperation between the States and the tribes in the management of these very valuable resources, and I would like to point to two or three of these. We can point to the early closures that were made to protect wild spawning runs of steelhead. We can direct our attention to the targeting of hatchery instead of wild fish. We can agree to ceilings on total catch and to cooperative management generally.

Finally, the Department believes the issue that is being addressed is complex but resolvable. The conflict is on allocation, not conservation. We feel that the differences could be settled by negotiation. We have had a fair amount of experience in that arena. With respect to those parties who are not yet participating fully in this cooperative management, they need to be induced to do so.

With that, Mr. Chairman, I will terminate my abbreviated statement. Thank you very much.

[Mr. Kutkuhn's prepared statement, on behalf of the Department of the Interior, follows:]

STATEMENT OF DR. JOSEPH KUTKUHN, ASSOCIATE DIRECTOR, FISHERY RESOURCES, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 954, A BILL "TO PROVIDE ADDITIONAL PROTECTION OF STEELHEAD TROUT AS A GAME FISH, AND FOR OTHER PURPOSES."

JULY 11, 1985

Mr. Chairman and Members of the Committee, I appreciate this opportunity to present the views of the Department of the Interior on S. 954, the "Steelhead Trout Protection Act."

We cannot support the enactment of S. 954 and, in fact, oppose it for many of the basic reasons we could not support its predecessor in 1981.

Before reviewing the reasons for our opposition, however, I believe it would be useful to point out that the steelhead resources of the Pacific Northwest have improved dramatically over the last 4 years, the recent Washington State Initiative notwithstanding.

As you may know, the 1984-85 winter steelhead season in the Pacific Northwest was one of the best in recent years. Total catch in western Washington waters may have been the greatest since 1971-72. Streams fished by Indian tribes during 1984-85 accommodated some of the largest returning steelhead runs in recent memory. And it should be recognized that the large returns to Puget Sound River Systems, the Columbia River, and Washington Coastal drainages were, in part, a result of tribal management. Excellent cooperation between Washington Department of Game and tribal biologists resulted in harvest and escapement agreements before the winter seasons started, and no court hearing or Fishery Advisory Board meeting was necessary to settle disputes during the course of the season. In the past, mid-season conflicts often resulted in sudden openings and closings of both tribal and

sport seasons. The protection of wild spawners by early stream closures and other restrictions, the targeting of tribal fisheries primarily on hatchery runs, together with other cooperative management activities, have helped to boost runs of wild steelhead in many river systems. Steelhead counts at Bonneville Dam on the Columbia River in 1984 were among the highest since Bonneville was constructed in 1937.

Tribal hatcheries in western Washington released approximately 1.7 million steelhead in 1984, along with approximately 26 million salmon. In 1983, releases of steelhead from these hatcheries constituted 25 percent of total steelhead releases in western Washington. A summary of releases in 1983 by tribal hatchery is attached (Attachment A). With funding support from the Federal Government, salmon and steelhead releases from tribal hatcheries have increased significantly in recent years, as noted in Attachment B. In all, one has to be impressed by what has been accomplished for the steelhead trout by all parties working together cooperatively in recent years.

The proposed legislation, rather than resolving fishing controversies, is contrary to the spirit of the 1979 U.S. Supreme Court opinion, which upheld the Boldt Decision, would subject the United States to a claim of just compensation under the Fifth Amendment, and would lead to protracted, expensive, and complex litigation that could result in substantial money judgments against the United States. The legislation would also undermine the Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 95-561, which Congress enacted as a mechanism for increasing tribal/state cooperation on fishery matters while preserving Indian treaty commitments.

Since the issues addressed by the legislation do not appear to deal with biological or environmental protection for the steelhead, this legislation would jeopardize the cooperative relationship between State and tribal biologists, and result in the termination of numerous tribal efforts directed toward steelhead management and enhancement. More than ever, cooperation between State and tribal biologists is required to continue restoration efforts and develop appropriate harvest management policy. We are hopeful that such continued cooperation, coupled with the aggressive hatchery production programs conducted by all parties, including the treaty tribes, will contribute significantly to future steelhead enhancement.

We believe moreover that designation of the steelhead as a game fish can be achieved, where appropriate, on an individual basis through agreements between the State and the affected tribes. The Columbia River treaty tribes, for example, agreed under a 5-year management plan approved by a United States District Court, to limit the taking of steelhead through time and location restrictions involving gill netting of salmon. In return, the States and Federal Government have worked to improve the runs of all anadromous fish.

S. 954 provides that State laws and regulations prohibiting, restricting, or regulating the taking, possession, transportation, or sale of steelhead trout be applicable to Indians fishing both within and outside their reservations to the same extent as such laws and regulations apply to other persons. Tribal consent would not be required for a State to assume this jurisdiction. Further, the rights of any individual Indian or Indian tribe would be terminated or modified.

Accordingly, the subject bill would affect the treaty fishing rights of 21 tribes in Northwest Washington and four tribes in Washington, Oregon, and Idaho whose treaty fishing rights have been adjudicated. Many Indian tribes in the Pacific Northwest have established legal rights under their treaties with the United States to take one-half of the harvestable fish destined for usual and accustomed tribal fishing places. These rights were upheld in a U.S. Supreme Court opinion (*Washington v. Washington State Commercial Passenger Fishing Association*, 443 U.S. 658 (1979)), which modified but generally affirmed the so-called "Boldt Decision" (*United States v. State of Washington*, 384 F. Supp. 312 (D.C., Wash., 1974)). Judicially-validated Indian treaty rights include the right to fish for steelhead trout.

Steelhead trout is highly prized by sport fishermen for its recreational values, but it also constitutes an integral part of the fishery of many tribes. Furthermore, because steelhead trout frequently run together with salmon, restrictions on tribal steelhead fishing would adversely affect the fisheries of many tribes even when steelhead is not the targeted species.

Section 2(b) of S. 954 declares that the purpose of the Act is to decommercialize the taking, possession, transportation or sale of steelhead trout in accord with the desires of the citizens of the State of Washington, as expressed in the statewide vote approval of Washington State Initiative 456 on November 6, 1984. This advisory initiative conflicts with the Federal Government's trust responsibility to aid in the protection, management and development of Indian trust resources. State initiatives cannot change Federal law, including treaty rights, which are protected by the Supremacy Clause of the United States Constitution. We regret, too, that Initiative 456 ignores the fact that for several years, tribal, State and

Federal personnel have worked hard and successfully at expanding and improving coordination and cooperation among themselves as well as with recreational fishermen, commercial fishermen, and environmentalists in resolving fishery-related problems and in developing realistic fishery management programs.

Section 2(2) of S. 954 states that "the value of steelhead trout to the economy as a game fish is substantially greater than its value as a commercial fish." Many of the treaty tribes have become increasingly dependent on steelhead as a major income resource due to the conservation closures of the tribal salmon fisheries. Since steelhead escape most ocean fisheries, they are easier to conserve and thus represent a more reliable source of income for Indians than salmon.

Although steelhead make up a relatively small percentage of the total Indian treaty harvest, there is considerable variation among tribes as to the importance of steelhead to their individual economies. With regard to the Hoh Tribe, for example, steelhead accounted for approximately 23 percent of the total catch (in numbers of fish) in 1969, and 64 percent of the catch in 1980. The increased importance of steelhead has not resulted from significant increases in the harvest of steelhead, but from substantial reductions in the availability of chinook and coho salmon.

Steelhead has been an important item of trade between Indian tribes for thousands of years, and, during the past 200 years, it has been significant in commercial transactions between Indian tribes and non-Indian settlers. Steelhead, like other anadromous fishes, are a traditional item of commerce for Northwest tribes. If denied the opportunity to take steelhead for traditional uses and purposes Indian fishing societies would be impaired.

Many contemporary Indian tribes have established their own fish processing and marketing systems. The removal of steelhead as a commercial species would threaten these enterprises, which depend upon the opportunity to handle fish year-round as the different species become available. Consequently, the steelhead resource is important in maintaining the social structure and stability of many Indian communities because it enables tribal members to maintain gainful and meaningful employment in desirable and traditional fishing occupations throughout the year. Moreover, many tribes collect taxes from their fishermen and related enterprises. The elimination of steelhead as a revenue source for tribal governments can impair the ability of these governments to provide for the needs of their communities.

The decommercialization of steelhead trout, notwithstanding applicable Indian treaties and Federal court decisions, would unilaterally abrogate treaty rights held by the Tribes to fish for steelhead trout. Treaty abrogation constitutes a repudiation of promises made when the United States acquired vast areas of land and vast quantities of renewable natural resources. The courts, to the extent possible, have protected treaty rights by assuming that Congress would not abrogate these rights, in the absence of an overriding national interest.

Section 2(4) of S. 954 states that the Indian right to harvest and market steelhead trout commercially has had "...significant and adverse effects on sport fishing, on the economies of the affected States, and on the ability of the affected States to manage steelhead trout effectively and uniformly." This statement ignores the fact that for several years, tribal, State and Federal personnel have expanded and improved coordination and cooperation among themselves and with sport fishermen, commercial fishermen, and environmentalists in resolving fishery

related problems, and in developing realistic fishery management approaches. The statement also fails to mention that 22 tribal fish hatcheries in the Northwest provide approximately 25 percent of the steelhead and 17 percent of the salmon produced by all western Washington hatcheries—Federal, State, as well as tribal.

Under the stringent management standards now prescribed by the Federal courts, both the resource and the treaty fishing right are protected. The procedural process employed in the regulation of steelhead involves a determination of the number of fish that can be safely harvested from each run without harming the resource. If a steelhead run is so depressed that it is incapable of sustaining any harvest at all, then neither Indian nor sport fishing should be permitted on that run.

Where harvestable numbers of steelhead are available, the opportunity to take a portion of the catch must be shared between treaty and non-treaty interests according to allocation standards prescribed by the courts.

Indian fisheries are located within concentrated areas on very limited stretches of about 25 river systems in the geographic area covered by the Boldt decision. Prior to the start of each season, the Washington Department of Game and tribal managers jointly estimate the number of harvestable steelhead returning to each of these rivers. Tribal managers develop regulations and monitor the fisheries to provide better estimates of the number of fish returning to the river and to determine the age structure and composition of the harvest (i.e., how much of the catch consists of hatchery fish). Fishing regulations are enforced by tribal officers who patrol the rivers. Catch is monitored daily by both tribal managers and the Washington Department of Game to ensure that the treaty allocation is not exceeded. Harvests by Indian fishermen are reported via landing ticket systems,

and, as a result, catch statistics for Indian steelhead fisheries represent accurate actual counts of fish taken. After the season is over, tribal managers survey rivers to estimate spawning escapements.

The presence of commercial net fisheries for steelhead, combined with the court-ordered standards of management, provides for a consistent and convenient source of timely management information. Data from tribal fisheries are commonly employed as a basis for determining the size of the returning steelhead runs as well as their composition in terms of age, origin, and sex. Because tribes have vested interests in the proper management of the specific runs of fish they harvest, they make the necessary investments to gather important information on spawning escapement and the size and timing of smolt migrations. They are also protecting and preserving the in-stream habitat, and addressing difficult questions regarding the productive potential of salmon and steelhead stocks. Phase II of the Boldt Decision provides enormous leverage for natural resource interests, through the treaty tribes, to oversee environmental alterations and modifications that may impact the habitat of the salmon and steelhead runs they share.

Section 2(5) of S. 954 states that the right to license sportsmen to fish for steelhead on Indian lands may be more valuable to Indian tribes than is their commercial fishery for steelhead. Thus, Section 5 authorizes the tribe to charge license fees. However, the tribes already have the right, affirmed by the U.S. Supreme Court, to charge fees for the privilege of fishing in waters on Indian-owned land. Section 5 would also give the tribes the right to charge license fees for fishing in "waters within the exterior boundaries of the tribes' reservation", a right which they may not have.

In summary, we cannot support what amounts to the abrogation of treaty rights, the overriding of Federal court decisions, or the invalidation of present co-management agreements and other cooperative efforts between the tribes, States, and Federal Government in favor of the steelhead trout's use by just one interest group.

This concludes my prepared statement. I would be pleased to answer any questions you or Members of the Committee may have.

Attachment A

Salmon and Steelhead Releases from the Puget Sound
and Washington Coastal Treaty Indian Hatcheries
in 1983 (in numbers of fish)

<u>Tribes</u>	<u>Chinook</u>	<u>Coho</u>	<u>Chum</u>	<u>Sockeye</u>	<u>Steelhead</u>
Hoh	-	-	-	-	93,000
Lower Elwha	112,000	1,134,000	233,000	-	63,000
Lummi	3,890,000	2,076,000	914,000	-	83,000
Makah	12,000	-	180,000	120,000	-
Muckleshoot	601,000	-	831,000	-	10,000
Nisqually	731,000	-	310,000	-	-
Nooksack	-	-	790,000	-	-
Port Gamble	-	400,000	1,955,000	-	-
Puyallup	464,000	337,000	21,000	-	60,000
Quinault	203,000	2,286,000	1,100,000	356,000	753,000
Skokomish	1,546,000	-	2,369,000	-	-
Squaxin Is.	293,000	2,221,000	1,534,000	-	34,000
Stillaguamish	34,000	-	894,000	-	-
Suquamish	601,000	1,127,000	929,000	-	31,000
Tulalip	1,500,000	-	818,000	-	-
Total	9,987,000	9,581,000	12,878,000	476,000	1,127,000

TOTAL SALMON 32,922,000

TOTAL ALL SPECIES 34,049,000

Attachment B

SALMON AND STEELHEAD RELEASES FROM TREATY INDIAN HATCHERIES

1976 - 1983

<u>Year</u>							<u>Total</u>	
	<u>Pink</u>	<u>Coho</u>	<u>Chinook</u>	<u>Chum</u>	<u>Sockeye</u>	<u>Salmon</u>	<u>Steelhead</u>	
1976	409,000	4,244,200	1,992,500	1,705,000	1,236,600	9,487,300	341,400	
1977		5,319,000	1,848,000	11,504,000	186,000	18,857,000	288,000	
1978	220,000	4,072,000	6,151,000	17,103,000	368,000	27,914,000	197,000	
1979		4,067,000	4,998,000	18,478,000	483,000	28,026,000	470,000	
1980	287,000	5,068,000	6,083,000	11,899,000	328,000	28,665,000	389,000	
1981		6,959,000	5,577,000	12,647,000	297,000	29,480,000	1,162,000	
1982	143,000	6,167,000	10,843,000	13,368,000	469,000	32,990,000	1,399,000	
1983		9,581,000	9,987,000	12,278,000	476,000	32,922,000	1,127,000	

Senator GORTON. Mr. Kutkuhn, is it the general position of the administration that Congress should not override Federal and Supreme Court decisions?

Mr. KUTKUHN. I believe so, sir.

Senator GORTON. Does that include abortion and school prayer and busing?

Mr. KUTKUHN. I am not sure, sir, that I am in a position to answer that question.

Senator GORTON. Do you think maybe you might want to modify your answer to the previous question?

Mr. KUTKUHN. The previous question, again, sir?

Senator GORTON. Since the 1981 Salmon and Steelhead Conservation and Enhancement Act was passed, how much has the administration asked in appropriations for its implementation?

Mr. KUTKUHN. Technically none, sir. If we are talking about the management phase of the program envisioned by the act, that has been implemented with current funding. If we are talking about the enhancement followup, following development of the management plan called for, the enhancement portion of it, no, there has been no initiative to seek funds to provide for the enhancement.

Senator GORTON. There have in fact been substantial appropriations for that purpose, but they have always been over the objection of the administration, have they not?

Mr. KUTKUHN. That is correct, sir.

Senator GORTON. What percentage of the anadromous fish in the *Boldt* case area are made up of steelhead and what percentage of salmon?

Mr. KUTKUHN. In the *Boldt* case area, I would have to refer that question to my colleague for the definitive answer that I believe the record would demand.

Can you help me on that, Gary?

Mr. RANKEL. The percentage of the harvest?

Senator GORTON. I suppose either the percentage of the harvest, or my question was the percentage of the fish: Of anadromous fish in the *Boldt* case area, what percentage is steelhead and what percentage is salmon?

Mr. KUTKUHN. The total runs of anadromous fish, what percentage steelhead and what—

Mr. RANKEL. I don't have those precise percentages, but certainly the majority of the runs is comprised of the various salmon species as opposed to steelhead.

Senator GORTON. That is not a very helpful answer. It is an overwhelming majority, is it not?

Mr. RANKEL. Yes.

Mr. KUTKUHN. Yes.

Senator GORTON. Do you want to get me the answer to that question?

Mr. KUTKUHN. Yes; we can provide that, sir. The figure—22-percent steelhead versus 78-percent salmon—sticks in my mind, but I would like the opportunity to verify that.

Mr. RANKEL. As far as hatchery releases are concerned, in 1983 the total hatchery releases in the State of Washington, tribal and State combined, were approximately 188 million salmon, and 3.2 million steelhead.

Senator GORTON. That would be about 98-percent salmon, then, and 2-percent steelhead. Right?

Mr. RANKEL. Of course you can't really go on a numbers basis because steelhead are reared to a much larger smolt size, which takes a lot longer than many of the salmon and is much more costly. On a poundage basis it would not be such a large margin, but I wouldn't know off the top of my head what the percentage breakdown by weight is.

Senator GORTON. Do you know what the commercial value of the Indian catch of steelhead is, and of the Indian catch of salmon?

Mr. KUTKUHN. The relative value, sir?

Senator GORTON. Yes. I mean, just the commercial value.

Mr. KUTKUHN. Do we have those figures, as to commercial?

Mr. RANKEL. I am generally familiar with a study that was done, I believe by the University of Washington in 1980, which applied a multiplier effect to the commercial harvest similar to the multiplier effect that is applied to steelhead for the sport fishery and, as I recall, when you translate this multiplier effect through the economy, the processing industry—

Senator GORTON. No, no; I am not interested in that. I would be interested in the value to the Indians, the commercial value to the Indians, of their commercial steelhead and of their commercial salmon catch. I am not talking about multipliers. How much do they get out of it? I think—

Mr. KUTKUHN. Excuse me. You are referring to the income generated by the use of the resources?

Senator GORTON. Yes, the income generated by salmon catch and the income generated by steelhead catch.

Mr. RANKEL. I don't have that figure, but I can get it. I would like to respond by saying that, to Indian people, while the amount of money they get by selling salmon is certainly significant, there are also other values involved.

Senator GORTON. I am quite aware of that but that wasn't my question. My question was what the commercial values of the two, of salmon versus steelhead are.

Mr. RANKEL. The harvest of steelhead has fluctuated in recent years and of course has varied from year to year. I can't give you the average amount of revenue that the tribes received for steelhead in a given year. Perhaps some of the biologists with the Columbia River Inter-Tribal Fish Commission or Northwest Indian Fisheries Commission who are here today would have those figures.

Senator GORTON. Can you tell me—do you even have the figures available here or elsewhere?—as to the relative amounts of money which the Federal Government provided to the affected tribes, say over the course of a 10-year period, for steelhead enhancement and for salmon enhancement, or do you not have any way to divide those funds?

Mr. RANKEL. In response to that same question which we received from a member of your staff a couple of weeks ago, we did ask that question of our Pacific Northwest tribes. We have received responses from them that it would be very difficult to categorize the amount of money spent on fisheries work in the Pacific Northwest on a species basis because our budgets are not species-oriented. We did, however, receive a response from the Columbia River

Inter-Tribal Fish Commission, which I believe was submitted to your staff over a week ago, which provided their best response to that question.

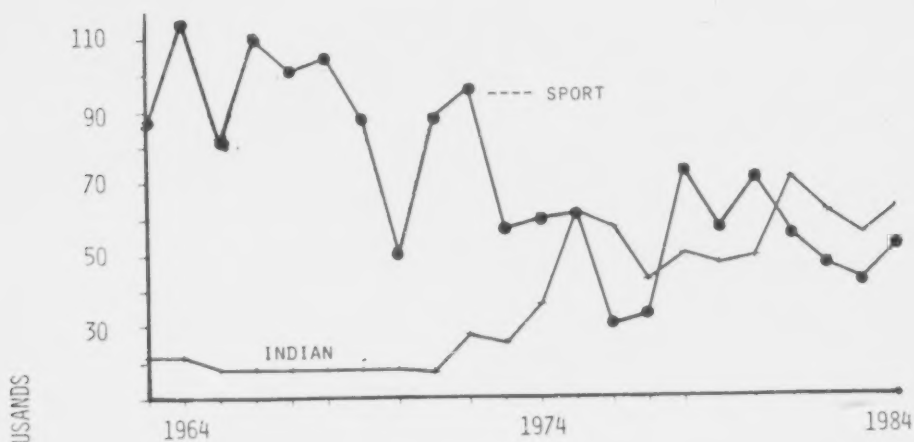
I have here a set of graphs and tables that I prepared to present data on current funding support, if I might distribute them.

Senator GORTON. Yes; we would be happy to have those for the record.

[The material referred to by Mr. Rankel follows:]

CHART 1

INDIAN AND SPORT STEELHEAD HARVEST IN BOLDT CASE AREA - 1963 TO 1984



TOTAL STEELHEAD HARVEST IN BOLDT CASE AREA - 1963 TO 1984

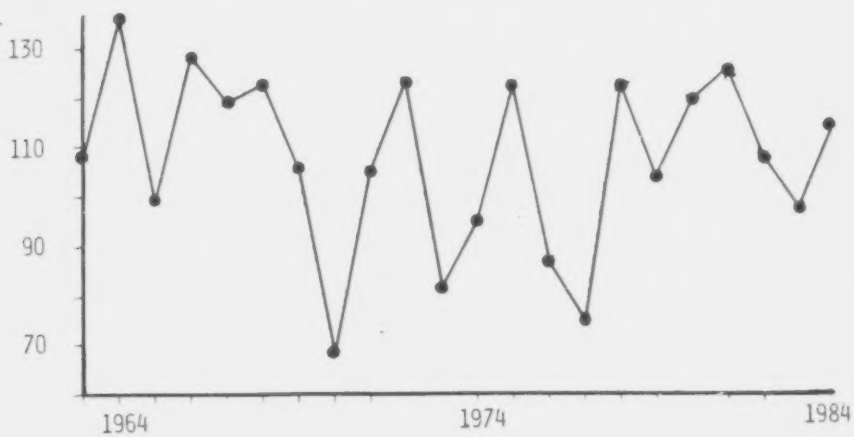


CHART 2

WINTER STEELHEAD ESCAPEMENTS IN BOLDT CASE AREA RIVERS - 1978 TO 1984

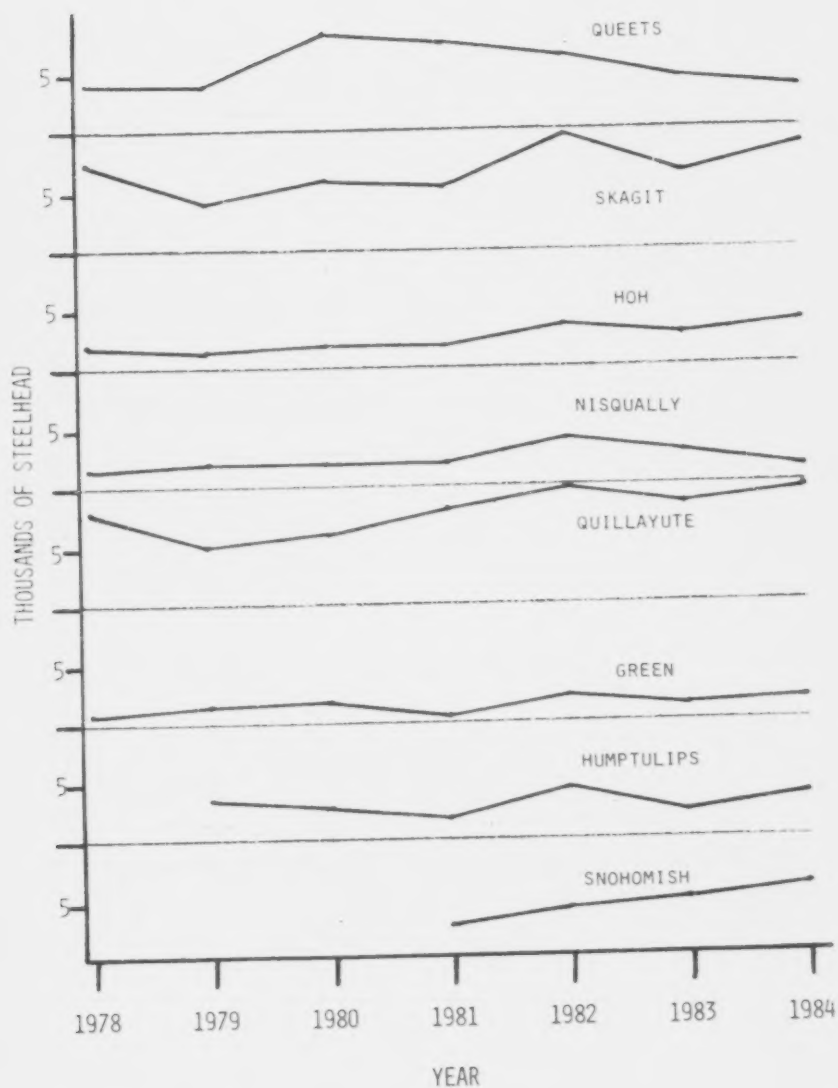


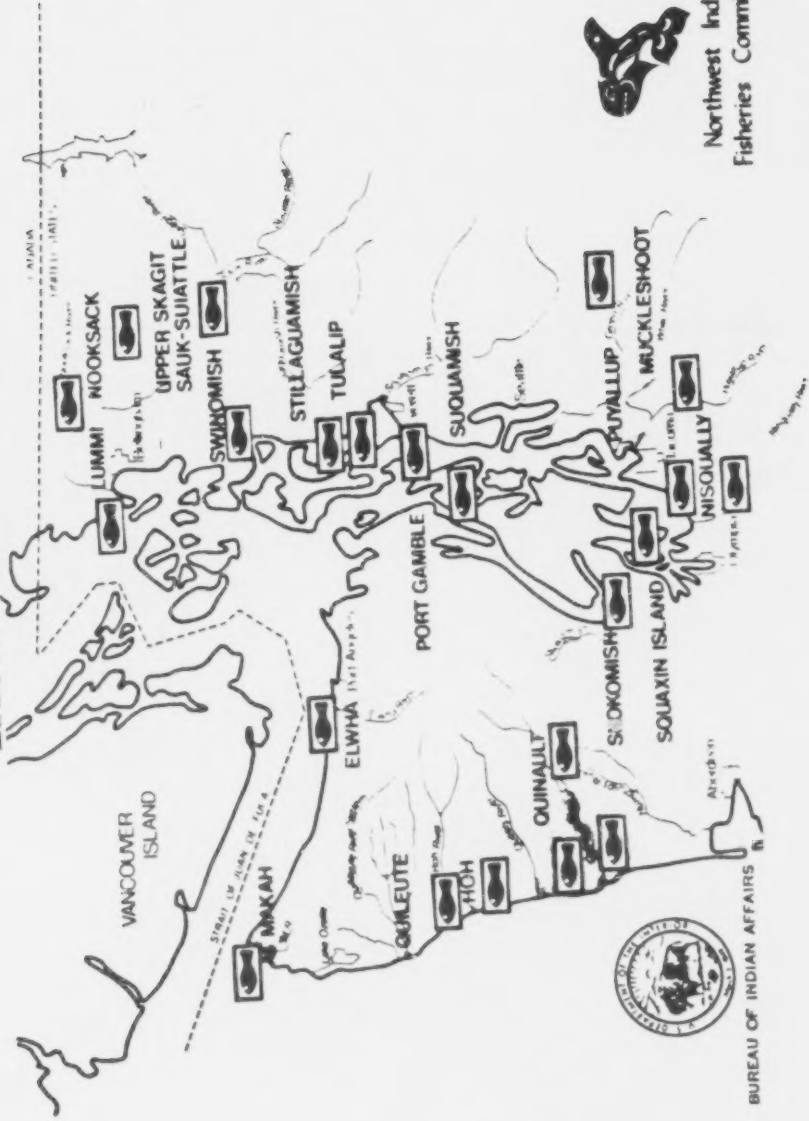
CHART 3

HARVEST AND TOTAL RUN SIZE OF COLUMBIA RIVER STEELHEAD: 1977-1984



CHART 4

Tribal Hatcheries



BUREAU OF INDIAN AFFAIRS



Northwest Indian
Fisheries Commission

CHART 5

INDIAN HATCHERIES PRODUCE

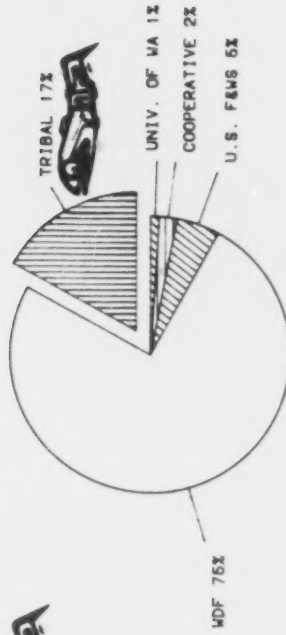
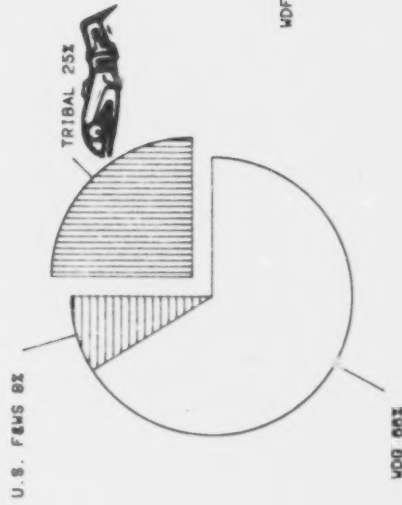
25% of Steelhead

17% of Salmon

In Western Washington Waters

1983 STEELHEAD RELEASES

1983 SALMON RELEASES



TOTAL RELEASES = 3,221,000

TOTAL RELEASES = 188,000,000

CHART 6

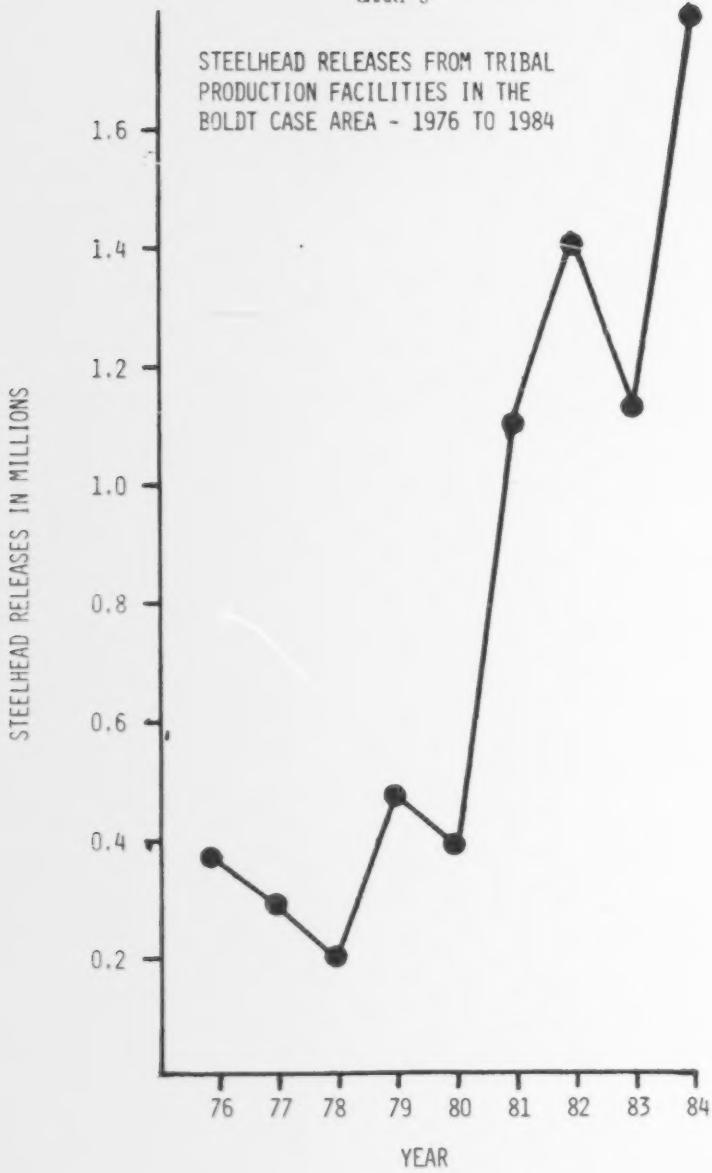


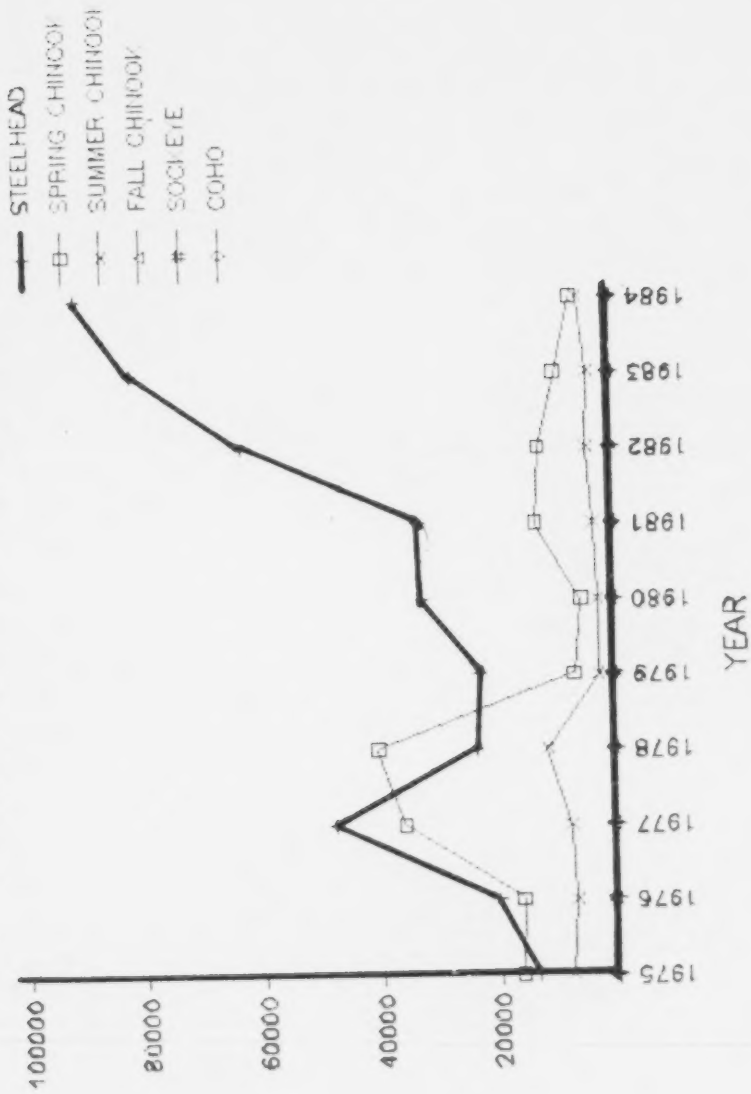
CHART 7

FY 1985 BIA FUNDING FOR FISHERIES MANAGEMENT
IN THE PACIFIC NORTHWEST
(\$ x 1,000)

A. <u>TRIBAL PROGRAMS</u>		B. <u>BIA AGENCY PROGRAMS</u>	
CRITFC	1,252	CHEHALIS	55
HOH	225	COLVILLE	106
JAMESTOWN CLALLAM	50	NEZ PERCE	159
LUMMI	947	UMATILLA	50
MAKAH	447	YAKIMA	<u>258</u>
METLAKATLA HATCHERY	502	SUBTOTAL	\$628
MUCKLESHOOT	429		
NISQUALLY	451	C. <u>SPECIAL PROGRAMS</u>	
NOOKSACK	192	MOA WITH U.S. F&WS	153
NWIFC	725	QUINULT HATCHERY	265
POINT NO POINT	824	FISH HEALTH LAB	30
PUYALLUP	324	PAO-BIA TECH UNIT	<u>190</u>
QUILEUTE	439	SUBTOTAL	\$638
QUINULT	1,194	GRAND TOTAL	\$11,882
SKAGIT SYSTEM COOP.	580		
SQUAXIN ISLAND	451		
STILLAGUAMISH	219		
SUQUAMISH	439		
TULALIP	<u>926</u>		
SUBTOTAL	\$10,616		

CHART 8

LOWER GRANITE DAM COUNTS



Mr. RANKEL. Chart No. 7—there is a small number on the right-hand upper corner of each—indicates that as far as Bureau of Indian Affairs funding is concerned, we are funding the Northwest Indian Fisheries Program at the tune of about \$12 million a year. These are 1985 dollars.

As I said and as you indicated, a large portion of the work is related to salmon and it's very difficult to break the budget down on a percentage basis between salmon and steelhead. Much of the work that is conducted is closely coordinated with other agencies, working on both species combined, and I think we will have some difficulty generating precise estimates of the amounts being spent on steelhead versus salmon.

Senator GORTON. Can you tell me how much support or what the nature of the support is from the Federal Government in the enforcement of commercial steelhead regulations?

Mr. RANKEL. Again, the fisheries program that is being funded, primarily through the two categories you see on chart 7—the first one under tribal programs, Columbia River Inter-Tribal Fish Commission at \$1.2 million, and the Northwest Indian Fisheries Commission halfway down the column at \$725,000—includes rather substantial enforcement components. I believe the enforcement program on the Columbia River is in the \$600,000 to \$700,000 range. The folks here from the commission might have that figure. I can certainly get it for you. I would guess there is well over \$1 million, perhaps \$2 million spent on enforcement each year. Again, breaking that down between salmon and steelhead would be very difficult.

Senator GORTON. Good. Thank you both very, very much. I appreciate your being here. I think we would like your written answers to those questions that you couldn't answer here, and we may have a couple of others for you as well.

Mr. KUTKUHN. Thank you, sir.

Senator GORTON. Our second panel consists of one person, Douglas Olson of the Steelhead and Salmon Protection Action for Washington Now.

Senator McClure will not be here in person but does have a written statement which will be included in the record immediately following that of Senator Evans.

Is Mr. Olson here? Mr. Olson? Evidently he is not here yet, so we will go on to the third panel: Mr. Bill Frank, Mr. Harp, Mr. Williams, Mr. Harder, and Mr. Lane, representing the Northwest Indian Fisheries Commission.

Mr. Frank, you are welcome. We have your statement. It will obviously be included in the record in full as if read, but we will be happy to hear from you now.

STATEMENT OF BILL FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. FRANK. Thank you, Mr. Chairman. I have with me today the panel that I am with here, and on my left is Jim Harp, a commissioner from the Northwest Indian Fish Commission, and Terry Williams from the Tulalip Tribe. On my right is Freddy Lane, and Randy Harder on my far right. I have two technical people here

with me to answer any of your questions. I have Gary Morashima and Gary Graves of the Northwest Indian Fish Commission. Gary Morashima is from the Quinault Tribe.

Mr. Chairman, as you have my statement, I am just going to make a couple of remarks. I hope out of this hearing today that we get some kind of an education on the resource in the Northwest for people like Senator McClure of Idaho, who is part of the Northwest. I hope that we of the Northwest—Idaho, Oregon, and Washington, and Alaska—can work together in making our resource healthy for everybody in a cooperative manner and an orderly manner.

I think that the record will show that the resource is on an upswing in the Northwest, the steelhead resource and the salmon resource. I think there is a lot of energy, a lot of money, and a lot of time being spent in the Northwest to achieve those goals that we have in the Northwest for a healthy community and a healthy resource that we can all be proud of and start living in harmony together.

I would like to say that we are back here again on a decommercialization bill for steelhead, and I would hope that that would be the last time. I would hope that we take our time now to start putting the resource together in the Northwest for all of us. I would hope that you, Senator Gorton, would be part of that, and I hope that we can start working together to achieve the goals of the Northwest, the goals of the Indian tribes, the goals of the non-Indians, the goals of the ocean tollers, the sportsmen, the charter boaters, the purse seiners, the gill netters.

I hope that these things are taking into consideration, and I hope the energy that is being spent for going out and getting votes in a mall to abrogate our treaty will discontinue in the Northwest. I hope that this hearing is going to bring some education to people in our State, because it is going to take our people in our State—that is you and I, and our people in our State, the Indian people and the non-Indian people—to put it together.

We are going to work hard at it. The Indian tribes are dedicated and committed to doing that, as well as the State of Washington, the State game department now that we work hard together with, and working hard to stay out of court. I hope that these things are going to be taken into consideration, and I hope that we are going to go down the road together.

If I was talking for the salmon—and the salmon, he can't talk—he would say that he is running out of time. We are here. We are giving him some time, and we are listening to that Salmon Now and we are trying to put that habitat back together. We are trying to work with the utility companies, corporations and timber people. I think those are some of the reasons why we are on the upswing of putting the resource back together.

I want to thank you for being here and taking the time to have this hearing today. We are here.

[Mr. Frank's prepared statement follows. Testimony resumes on p. 72.]



Northwest Indian Fisheries Commission

TESTIMONY ON SENATE BILL 954

"The Steelhead Decommmercialization Bill"

TO: THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

FROM: THE NORTHWEST INDIAN FISHERIES COMMISSION

JULY 11, 1985

CONTENTS:

1. Written Testimony by Bill Frank, Jr., NWIFC Chairman
2. Joint NWIFC/Washington Department of Game News Release,
"Winter Steelhead Season Was One of the Best"
3. NWIFC Staff Report, "Status of Steelhead Management in
Western Washington"

Testimony To Select Committee on Indian Affairs
Regarding Senate Bill 954
"The Steelhead Decommmercialization Bill"

From: Bill Frank, Jr., Chairman, Northwest Indian Fisheries Commission

July 11, 1985

Members of the Select Committee on Indian Affairs, I am Bill Frank, Chairman of the Northwest Indian Fisheries Commission. It is my pleasure today to introduce a Northwest Indian Fisheries Commission panel, here to represent the views of western Washington Treaty Tribes on Senate Bill 954.

We have grave concerns about Senate Bill 954, and believe it is a deliberate effort to abrogate the treaties which guarantee our right to fish for steelhead, as we have done for thousands of years.

We are also here to speak on behalf of the steelhead resource, itself. Senate Bill 954 would not only be a clear violation of Indian treaty rights; it would also be detrimental to the steelhead.

As you know, a 1974 U.S. District Court ruling guaranteed the Treaty Tribes fifty percent of the fish. This ruling obviously resulted in a reduction of the sport steelhead catch which dominated the total harvest, and an increase in Indian net harvest. This led some sports fishermen to speculate over the years that the steelhead resource was declining. They blamed Indians. But the total catch in the decade preceding 1974 was about the same as the past 10 years. The harvest has been reallocated, but the total catch for both decades was slightly more than a million fish.

The U.S. District Court also established the Treaty Tribes and the State of Washington as co-managers of the fisheries resource. The resulting benefits of that co-management have led sports fishermen and fish management agencies, including the Washington State Department of Game, to recognize that tribal involvement in fisheries management is a plus.

Consider, if you will, a recent joint news release from the Northwest Indian Fisheries Commission and the State Department of Game that called the 1984-85 winter steelhead season "a dandy...possibly the best season since the great season of 1971-72." We ask you to consider that the Northwest Chapters of Trout Unlimited voted early in June to oppose Senate Bill 954 by a margin of 59 to 6. Consider that the Washington State Charter Boat Association has issued a

statement of opposition to this bill. In that statement, Mr. Mark Cedergreen said most non-Indian fishing groups in Washington State have finally resolved themselves to the reality of Indian fishing rights. He points out that the U.S./Canada Salmon Interception Treaty became a possibility because of cooperation between Indian and non-Indian fishermen, that cooperative efforts are underway right now to rebuild and improve the resource, and that Senate Bill 954 would only tend to reverse the progress that has been made.

These are clear indications that cooperative tribal and state management can work, and is working. Decommmercialization of steelhead would end that participation and cooperation.

Hatchery production has increased over the years, and some people have objected that natural runs have consequently declined. However the stability in total steelhead catches combined with recently collected spawning escapement data on many streams, indicate that sport and tribal fisheries are targeting more on hatchery fish and that natural fish populations are stable, or increasing in size. Indians have targeted their steelhead fishing on hatchery stocks since 1974 wherever it is appropriate to do so.

There have been some objections that treaty net fishing is so efficient that it results in overharvest that precludes sport fishing, or reduced spawning escapement. The fact is that non-treaty catch has often exceeded treaty catch, and that the use of net fisheries is beneficial to steelhead management. Tribal net fishing, usually near river mouths, provides data collection opportunities that help establish entry timing for wild stocks. Also, the efficiency of tribal fishing helps make it possible for Tribes to take a large part of their harvest while hatchery fish are at their peak abundance. This reduces tribal harvest of wild fish where they need protection.

The Tribes have performed an increasingly important role in steelhead enhancement, management and data collection. The Tribes have also stepped in to fill the gap in steelhead management and enhancement programs when funding problems affected the Department of Game in recent years. Case Area Tribes have released more than a million steelhead every year since 1981. The tribal release in 1984 was nearly double that, and represents more than 25 percent of the total Case Area steelhead smolt production.

Tribal biological staffs, in cooperation with the Department of Game, intensively sample tribal catches to acquire accurate biological and catch statistics. This provides the biological data necessary to properly separate and manage natural stocks. Natural spawning escapement estimates are now being collected on most rivers in the Case Area, often due to the dedication and efforts of tribal fishery management staffs.

In a recent joint technical report, the Tribes and the Department of Game developed a creative spawner recruit formula which may greatly enhance the ability of tribal and state fish managers to establish working escapement goals. The inclusion of a steelhead protection statement in the recently enacted U.S./Canada Salmon Interception Treaty was another result of cooperation between the Tribes and other fisheries management entities. This treaty ensures that the conservation needs of steelhead will be taken into account in the international management of salmon species.

Great progress is being made toward cooperation between the Department of Game and the Tribes. The Tribes and the Department of Game reached harvest management agreements on all Case Area rivers for the 1984-85 season, which has made management of respective fisheries easier and more efficient.

We ask you to consider the far-reaching benefits of such cooperative efforts when you decide the fate of Senate Bill 954, because this bill asks you to go on record condemning tribal participation in steelhead management. It asks you to go on record opposing the age old right of Indians to fish for steelhead.

We ask you to abandon this ill-advised approach toward steelhead regulation and join the "New Era of Cooperation." In so doing, you will be supporting the responsible stewardship of the steelhead resource and the obligations of the United States under treaty commitments to the Indian Tribes of the Great Northwest.

Thank you.



Northwest Indian
Fisheries Commission

DEPARTMENT
OF GAME



news release

FOR IMMEDIATE RELEASE: May 28, 1985

CONTACT: Steve Robinson, Information Services Manager, Northwest Indian Fisheries Commission, (206) 352-8030
Terry Rudnick, Conservation Education Program Specialist, Washington Department of Game, (206) 753-5700

WINTER STEELHEAD WAS ONE OF THE BEST

OLYMPIA: As many western Washington steelheaders already know, the 1984-85 winter steelhead season was a dandy. Just how good it was won't be absolutely clear for several weeks, but Department of Game biologists and those of Washington treaty Tribes think the total catch may be the largest since 1979-80, or possibly even the best since the great season of 1971-72.

Anglers on such river systems as the Puyallup, Green, Snohomish and Cowlitz enjoyed an especially good winter, according to Bob Gibbons, the Department of Game's steelhead program manager. Comments on those rivers included descriptions such as "Just like the old days." Department of Game creel checks on some of those stream systems seem to bear out that comparison.

On the Green River, for example, creel check information shows that anglers caught about 7,000 steelhead this season. That's nearly three times the catch average of the last three seasons, says Gibbons.

The improvement was even greater on the Skagit system, where creel checks turned up over 6,000 sport-caught steelhead during the 1984-85 season. During the three seasons prior, the average sport catch on the Skagit was about 1,700 fish.

Creel checks turned up about 13,000 steelhead for anglers on the Snohomish system this season, compared to a three-year average of 6,790, while on the Quillayute system this year's sport catch was over 5,200, about 500 fish above the three-season average.

-more-

Like sport fishermen, tribal commercial fishermen also had a good winter. The tribal steelhead catch in Puget Sound and on the coast may well be the largest since the Boldt decision over 10 years ago.

While sport and tribal fishermen were busy catching steelhead, Department of Game and tribal fish biologists were cooperating with each other as never before. Agreements on harvest and escapement of the valuable steelhead resource were reached with all Tribes before the winter seasons started, and there wasn't a single court hearing or Fishery Advisory Board meeting to settle disputes during the course of the season. In the past, mid-season conflicts often resulted in sudden openings and closing of both tribal and sport seasons.

There are several good reasons for this year's strong steelhead runs and subsequent good fishing. High ocean survival, combined with the generally good quality of hatchery steelhead smolts are at least partly responsible. Added protection provided for wild steelhead in the late seventies and early eighties was also a factor. The protection of wild spawners by early stream closures and other restrictions, the targeting of tribal fisheries primarily on hatchery runs and other cooperative management activities have no doubt helped to boost the wild steelhead runs on several river systems.

"There is no question that everyone benefits when we get a great return of steelhead like the run we had this winter," said Archie Mills, chairman of the Washington Game Commission. "People should realize that these things don't just happen. It takes a lot of work on the part of many people to have good fish runs these days, and it also takes a great deal of cooperation. I think this steelhead season was a good example of what that kind of work and cooperation can provide."

"We are all seeing the benefits of cooperative management," said Bill Frank Jr., chairman of the Northwest Indian Fisheries Commission. "Continued cooperative management efforts and joint efforts to enhance the fishery and protect habitat will ultimately result in many good fishing seasons. The Tribes want this to happen for all fishermen."



THE PACIFIC SALMON TREATY

ANSWERED PRAYER

Years of bitter feuding end with stroke of pen tomorrow

Richard W. Larson
Times Associated Editor

State, tribes have good news on chinook fishery

Washington State Department of Fisheries and tribal agreements have reached agreement on a cooperative management plan for the Puget Sound chinook fishery.

been not about to allow enough salmon to return to the streams, thus to satisfy both state and tribal rights in the fishery.

There will be more fish for every one, said Northwest Indian fisherman. A key element of the plan is to increase the production of chinook salmon in Puget Sound by both Indian and non-Indian fishermen.

Under the fisheries agreement, the state and tribes are to share the value of the fish used to offset the value of the salmon. The tribes will receive 50% of the value of the fish used to offset the value of the salmon. The tribes will receive 50% of the value of the fish used to offset the value of the salmon.

A new spirit of detente in fish management

By Brian Duke
Daily World Staff

In the 100 years since the signing of the 1855 treaty, the state and tribes have been at odds over the management of the Puget Sound chinook fishery.

There is a new spirit of detente in fish management. The state and tribes have reached a cooperative management plan for the Puget Sound chinook fishery.

The U.S. and Canada Pacific Salmon Treaty signed March 15 in Vancouver, B.C., is a landmark agreement. It is the first time that the state and tribes have reached a cooperative management plan for the Puget Sound chinook fishery.

There were objections to the plan. The tribes were concerned that the state would not honor its obligations under the 1855 treaty. The state was concerned that the tribes would not honor their obligations under the 1855 treaty.

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Cooperation brings salmon banque

Indian, sport fishermen to increase salmon runs

By Robert Soderman
Daily World Staff

Salmon is the lifeblood of the Puget Sound area. The state and tribes have reached a cooperative management plan for the Puget Sound chinook fishery. This plan will increase the salmon runs and bring about a new spirit of detente in fish management.

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Chinook hitting in Tacoma area, Strait

By Bob Strattan
Times Staff

Big chinook salmon were hitting in the Strait of Juan de Fuca during the weekend. The state and tribes have reached a cooperative management plan for the Puget Sound chinook fishery. This plan will increase the salmon runs and bring about a new spirit of detente in fish management.

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—Continued on the front page.



Northwest Indian Fisheries Commission

July 11, 1985

STATUS OF STEELHEAD MANAGEMENT IN WESTERN WASHINGTON

Following the reaffirmation of treaty Indian fishing rights by the U.S. District Court in 1974 (U.S. v. Washington), there has been a significant change in both the management and harvest strategy for the steelhead resource in Puget Sound and the Washington coast (Case Area). The Court determined that the Treaty Tribes not only have a right to a specific share of the harvest (50%), but that they are also resource managers along with the State of Washington. There has been much controversy and considerable speculation regarding the effect that tribal harvest and co-management authority have had on the health of the steelhead resource over the past ten years. This report is a review of the management practices that have been utilized since 1974, the general health of the steelhead resources, and the prospects for future management success.

The obvious immediate effect of establishing a specific treaty Indian harvest entitlement of 50% was a reduction in the sport harvest and an increase in the treaty Indian harvest which had previously been restricted to a few on-reservation and subsistence fisheries (Table 1). This reduction in sport harvest caused speculation by some that the resource was declining, specifically the wild stocks, and that

treaty Indian net fisheries were the cause. However, Figure 1, which provides total harvest data from 1962 to the present, clearly shows that the trend in harvest since 1974 is not declining. The harvest has been reallocated between treaty Indian and non-treaty fisheries, but the total magnitude of the catch exhibits no apparent trend.

The historical data base is inadequate to establish a long term trend in natural run sizes. However, one consequence of tribal involvement in management has been a greater emphasis on obtaining total natural and hatchery run size estimates through spawning escapement estimation and improved catch accounting. These data allow us to examine recent status and trends for some natural stocks. Figures 3 and 4 provide spawning escapement patterns for those major Case Area natural stocks for which estimates have been made. There is no apparent declining trend in spawning escapements for any of these stocks; in fact, many stocks demonstrate increasing trends in both abundance and escapement. There is undoubtedly some variability in the status of the steelhead stocks from one system to another, but the general trend in catches and these natural stock spawning escapement data indicates that current steelhead management practices have been successful in maintaining healthy steelhead stocks.

There have been accusations over the past ten years that net fishing for steelhead is destructive to the resource. A common argument is

that treaty net fisheries are so efficient that they can easily overharvest their shares, thus precluding sport fisheries or reducing spawning escapement. Judge Boldt found in U.S. v. Washington that net fishing is not an inherently destructive means of harvesting steelhead (384 F. Supp. 387). Further, he found no credible evidence showing any instance of treaty fisheries being detrimental to the perpetuation of any species of anadromous fish (384 F. Supp. 338). In addition, the Federal Court built into the management structure protections to avoid overharvest. The Tribes and the State are required to agree before the fishing season on the amount of steelhead that can be safely harvested and the treaty and non-treaty allocations for each river system. Throughout the fishing season, each party monitors the harvest to ensure that the limits established are not exceeded.

Figure 5 demonstrates that, although there is some fluctuation in treaty and non-treaty shares by river system, the catch division for the entire Case Area is reasonably close to 50 percent. It should also be noted that sport steelhead catch may be influenced more by environmental factors, such as stream flow, than by fish abundance or the magnitude of treaty fishing. In some cases, the sport fishery is not able to harvest its full share due to environmental conditions or lack of fishing effort. Figures 3 and 4 demonstrate that current tribal and recreational fishing levels have not been detrimentally affecting spawning escapements.

Tribal net fisheries have been beneficial to steelhead management, in that they generally occur near the river mouths and provide valuable

data collection opportunities for establishing entry timing for both hatchery and natural stocks, and collection of basic biological and management data. Also because of their greater efficiency and shorter response time to critical management situations, tribal net fisheries are able to target on selective portions of a run, such as during a time period when hatchery fish are at their peak abundance. This can minimize the harvest of natural stocks, where appropriate.

Since 1974, the management approach of WDG and the Tribes has been to target fisheries to the extent possible on hatchery stocks. This has been possible because most of the hatchery stocks utilized in the Case Area exhibit an earlier and narrower run entry pattern than natural stocks. Most hatchery fish return in December and January contrasted with the peak abundance for natural runs occurring in February and March. Tribal fisheries generally occur in late December and early January, which corresponds with the peak of the hatchery run, except where harvestable natural stocks have been identified. Sport fisheries, which generally operate from December through March or April, have been regulated to reduce catch levels after February. In the last two years even more restrictive regulations have been imposed with specific cut-off dates for termination of treaty net fisheries and a requirement for many sport fisheries to release natural fish.

An important aspect of the tribes role in steelhead management has been in data collection and enhancement. Tribal biological staffs are involved in intensively sampling tribal catches both for accurate

catch statistics, compiled under a joint catch monitoring system with WDG, and for biological data necessary to properly separate and manage natural and hatchery stocks. Natural spawning escapement estimates are now being collected on most major rivers in the case area, in large part due to the efforts of the Tribes. WDG has experienced reductions in funding for their steelhead enhancement and management programs in recent years. The Tribes have stepped in to assist WDG with ongoing programs and to expand into much needed data collection and research efforts. Reductions in WDG's steelhead hatchery production in recent years have been offset by increases in Tribal hatchery production (Figure 2), thus continuing to increase the number of hatchery origin steelhead available to treaty and non-treaty fishermen. More than 25% of Case Area steelhead hatchery production is now provided by the Tribes.

Although there have been disputes concerning management approach between WDG and the tribes, significant progress has been made in recent years towards more cooperation in management. In 1984 discussions and research were initiated to address a long standing dispute over proper spawning escapement levels. A joint tribal/WDG technical report outlining a possible approach to this problem has recently been completed. For the 1984-85 season both the Tribes and WDG prepared their harvest management recommendations and then proceeded on a river by river basis to reach agreement on management plans for the current fishing season. For the first time agreements were reached on all Case Area rivers, without the involvement of the Federal Court or the Court's Fisheries Advisory Board.

The Tribes have also taken an important lead in habitat protection. The treaty fishing right carries with it a right to protection of the habitat on which these fish depend for their existence. This treaty right to habitat protection has also been affirmed by the U.S. District Court, and will prove to be a valuable asset for everyone interested in preserving a healthy steelhead resource for the future.

The steelhead resource and its users are the beneficiaries of improved and cooperative management between WDG and the Tribes. The Tribes are now an integral part of that management and enhancement effort, and without their participation, data collection, enhancement and management programs, and consequently the resource, would surely suffer.

Table 1.

TREATY AND SPORT HARVEST OF STEELHEAD
FROM 1961 TO THE PRESENT
IN THE U.S. v. WASHINGTON CASE AREA a/

<u>Year</u>	<u>Sport Harvest b/</u>	<u>Treaty Harvest c/</u>	<u>Total</u>
1962-63	86,500	21,700	108,200
1963-64	114,400	21,600	136,000
1964-65	81,300	18,000	99,300
1965-66	110,200	18,000	128,200
1966-67	101,100	18,000	119,100
1967-68	104,600	18,000	122,600
1968-69	87,900	18,000	105,900
1969-70	50,500	18,000	68,500
1970-71	88,000	17,300	105,300
1971-72	95,700	27,500	123,200
1972-73	56,900	25,000	81,900
1973-74	59,600	35,600	95,200
1974-75	61,100	61,400	122,500
1975-76	30,200	57,000	87,200
1976-77	33,000	42,500	75,500
1977-78	72,800	49,700	122,500
1978-79	57,000	47,000	104,000
1979-80	70,700	48,800	119,500
1980-81	55,100	70,400	125,500
1981-82	47,000	61,000	108,000
1982-83	42,400	55,200	97,600
1983-84	52,100	62,500	114,600

a/ The U.S. v. Washington Case Area includes Puget Sound and the Washington coast north of and including Grays Harbor.

b/ Sport catch estimates provided by WDG.

c/ Data prior to 1974 is incomplete due to the lack of an accurate catch reporting system. No data was collected between 1964 and 1970 and the numbers presented are estimates developed by WDG. The data from 1974-75 through 1977-78 was compiled by the USF&WS. Data after 1978 was jointly compiled by WDG and the Treaty Tribes.

Table 2.

STEELHEAD RELEASES FROM TRIBAL PRODUCTION FACILITIES
IN
U.S. V. WASHINGTON CASE AREA

<u>Tribe</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Hoh	-	-	34,000	22,000	-	44,000	125,000	93,000	56,000
Lower Elwha	-	-	30,000	30,000	43,000	35,000	41,000	63,000	70,000
Lummi	32,000	52,000	-	-	-	-	-	83,000	31,000
Makah	-	-	-	-	-	-	-	-	10,000
Muckleshoot	-	-	-	-	-	-	6,000	10,000	16,000
Quinalt	341,400	236,000	133,000	418,000	346,000	890,000	1,090,000	753,000	1,417,000
Quileute	-	-	-	-	-	-	7,000	-	19,000
Puyallup	-	-	-	-	-	50,000	8,000	60,000	51,000
Skokomish	-	-	-	-	-	-	122,000	-	31,000
Squaxin Island	-	-	-	-	-	-	-	34,000	43,000
Squamish	-	-	-	-	-	80,000	-	31,000	44,000
<u>TOTAL</u>	<u>373,400</u>	<u>288,000</u>	<u>197,000</u>	<u>470,000</u>	<u>389,000</u>	<u>1,099,000</u>	<u>1,399,000</u>	<u>1,127,000</u>	<u>1,788,000</u>

Figure 1.

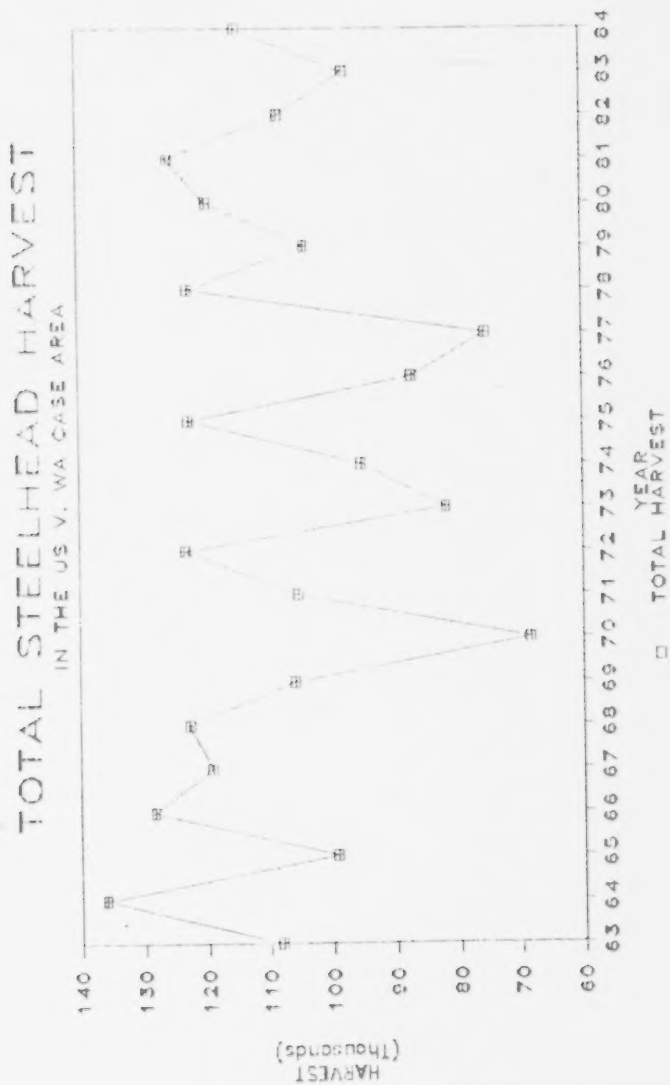
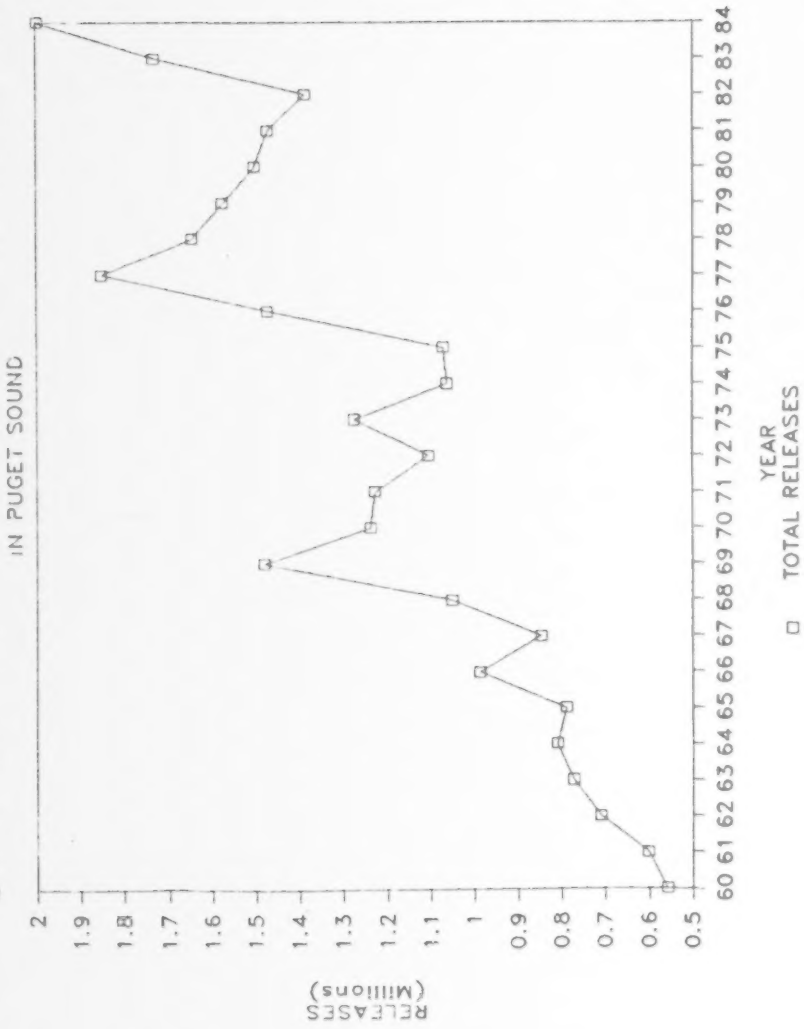


Figure 2. WINTER STEELHEAD RELEASES



WINTER STEELHEAD ESCAPEMENTS

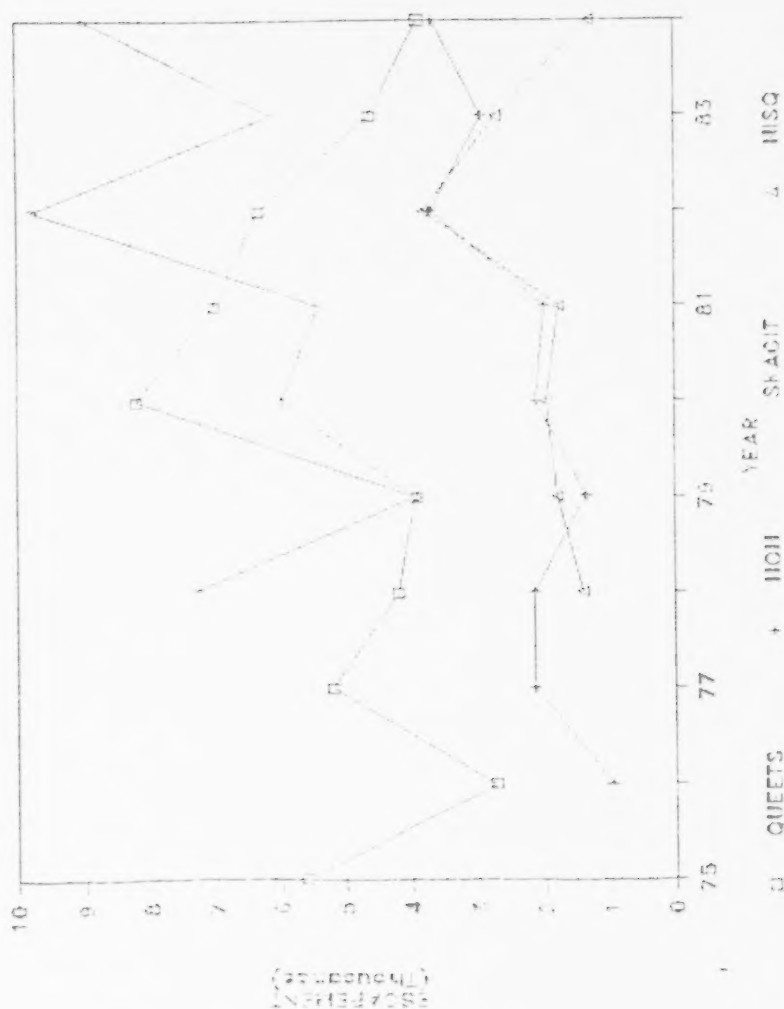


Figure 3.

WINTER STEELHEAD ESCAPEMENTS

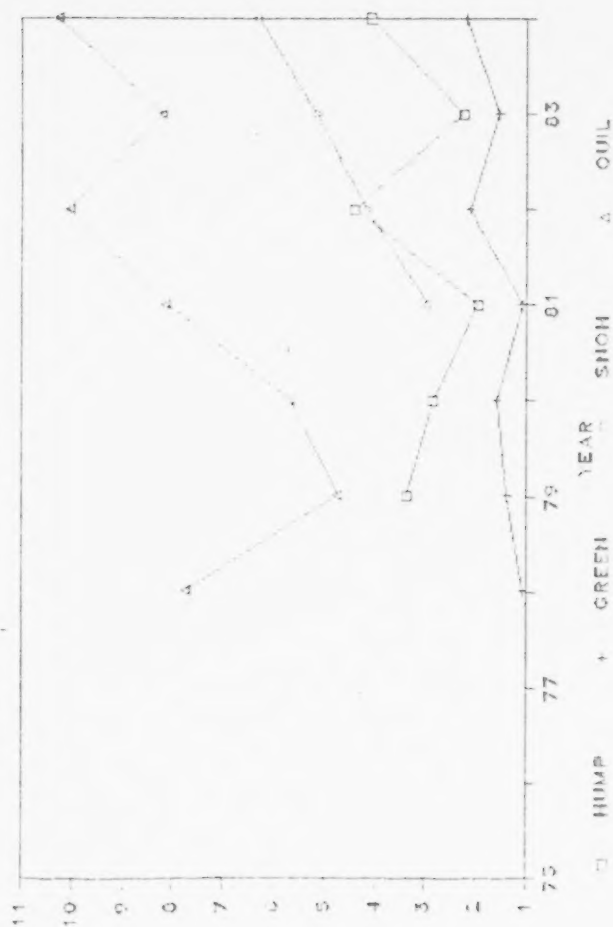


Figure 4.

STEELHEAD HARVEST IN THE US V. WA CASE AREA

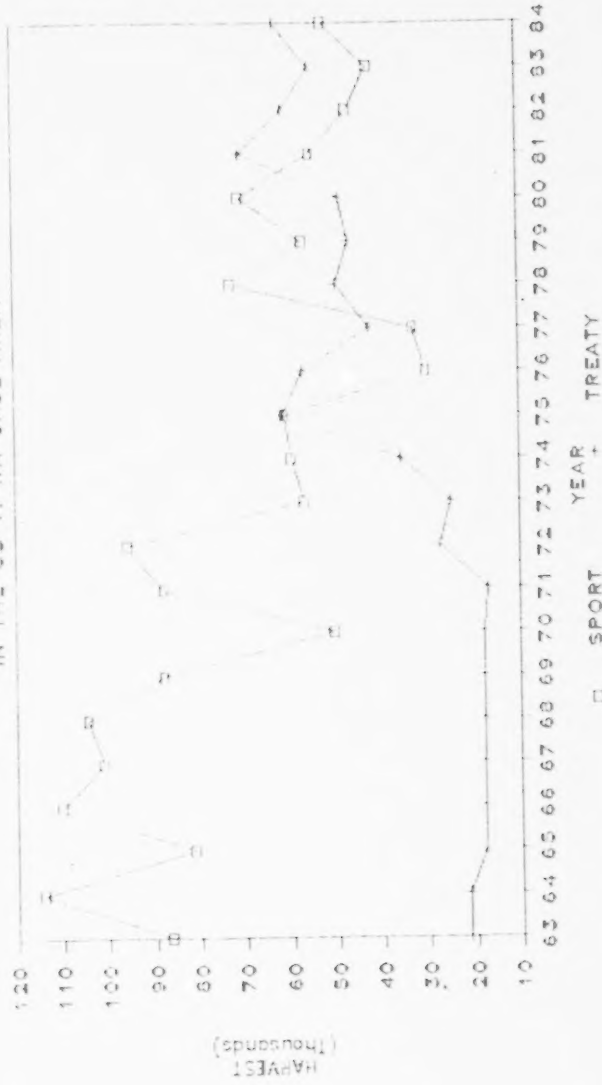


Figure 5.

Senator GORTON. Mr. Frank, you said in your comments there that you think that the steelhead is on the way back. Certainly from the point of view of your hatchery operations, these charts show that to be true. Is it your view that those operations and that cooperation are going to result in an increase in the total steelhead harvest in Washington and along the Columbia River in the foreseeable future—that this program is working?

Mr. FRANK. Yes, I do. I can't speak for every area but we hold meetings, monthly meetings with the sports people in the different areas, in Puget Sound and on the coast, and I only hear positive things that are taking place in the different areas and along the Columbia River—positive, good steps to put the resource back together in these particular areas and drainages, whether it be on the coast, the Columbia River, or in the Puget Sound area. I believe that they are all good, healthy, positive signs that you can take. If it is natural, wild salmon and steelhead that you are talking about, if it is an artificial that you're talking about, we've got to have them both. There is no one or the other. If it is wild, it is wild; if it is artificial, it is artificial; but somewhere we have to start putting together a healthier fish, if it is artificial or wild or they come together, and get a healthier salmon out of that, that he can be able to go to the ocean and his survival rate will be better.

Senator GORTON. Now let me ask you your own views about that. Do you prize, do you feel that wild steelhead stocks are more desirable than hatchery or that they are equally desirable?

Mr. FRANK. On my particular river, on the Nisqually River, we have a very few artificial steelhead on that river right now. In fact, I think it's as low as 200 or 300. The rest are all natural. On that particular drainage, and only speaking for that drainage, the drainage that I manage, I would not go to artificial on that drainage.

Now I cannot speak for other drainages because that particular drainage is a drainage that the whole drainage is pretty well wild country. We have the U.S. Army that protects one side of the river for 20 miles, and we have the farmers, and it's a pretty wild, natural river yet. I think hopefully that that river will be kept as a wild steelhead run.

Senator GORTON. In the entire *Boldt* case area, would you say that the wild stocks are gaining or losing ground or holding their own?

Mr. FRANK. I would say that they are holding their own, and I would say that looking to—we are in the process right now with the State of Washington the State game department, the State of Oregon, and the Columbia River Tribes, in putting a watershed plan together. Hopefully that watershed plan, out of that will fall—and it is nothing new that is happening in the Northwest, it's working to a comprehensive plan—that we will put the habitat back together and that wild and artificial will be—if you have a wild and an artificial on a drainage, that will be a designated drainage. It will have a wild and an artificial. Somewhere you will do an enhancement that will get a stronger salmon, in between the wild and the artificial, somewhere in here.

If it is wild, then we should keep it wild, that drainage, and protect that drainage for wild. If it is an artificial, which some rivers do have only artificial in our area, then we should look at that and

keep it as an artificial river but get a bigger and a stronger steelhead running in that river for the sportsman, and if there is an Indian commercial fishing on there, for an Indian commercial fishery and a sports fishery.

Senator GORTON. Is it true that some of the tribes who are members of the Northwest Indian Fisheries Commission either have moved all the way to treating steelhead exclusively as a game fish or are moving in that direction because it is a more valuable way in which to treat them?

Mr. FRANK. Well, you know the steelhead is a very big part of the Indian fishery in the winter months as they run, December and January, and I believe the Indian, that is a big part of his bread and butter. It is up to each individual tribe to manage that steelhead however they want to do it.

On my particular drainage, the Nisqually River, the steelhead run at the same time as the chum salmon, and I have a run size—they are both wild—and just giving you an example, Mr. Chairman, they will both run in December and January and February. Steelhead will continue on until May, and I have to at that time take approximately 2,000 steelhead and approximately 30,000 chums in that fishery. That fishery has to be regulated and I—

Senator GORTON. I'm sorry. Could you hold for just a second?

[Recess taken.]

Senator GORTON. I'm sorry to interrupt you. Why don't you go on ahead?

Mr. FRANK. Mr. Chairman, I was talking about the management of steelhead and chum salmon, both wild on the Nisqually River, and—

Senator GORTON. Your numbers were 2,000 and 30,000?

Mr. FRANK. Yes, approximately in that range of 2,000 and 30,000, both wild runs, and they have to be managed very carefully.

Senator GORTON. Are you saying that if you were prohibited from net fishing for steelhead, you would miss all the chum as well, or most of them?

Mr. FRANK. On that particular river, yes. It would disrupt the fishery. I mean, they are both two healthy, very healthy runs on the Nisqually River. They mean a lot to the Nisqually Tribe. Now they are managed very carefully. They are managed by the Nisqually Tribe exclusively.

In the past we have gone back, we have done our studies back in the 1970's, the early seventies, the tagging studies. We continue doing those with the information on steelhead. Particularly on the Nisqually River we don't have a lot of information. We are moving to get that information with different ways of counting the reds and the different things on the drainage.

We are working with the Centralia Diversion Dam to put \$1.5 million, the city of Centralia is putting that much into that project to make that a better way for the salmon to get up above the diversion dam and for the younger salmon to migrate back out. We are putting counters on them.

These are good things that are happening, but the Nisqually Tribe, in those winter months of the year the chum salmon and the steelhead has been particularly the only fish that has been getting

back to the south Puget Sound, and there are a lot of reasons why it wasn't, because the other species were intercepted out in the ocean in the Canadian waters. But now the steelhead is a very valuable winter fishery. I mean, there is none on the market at that time of the year. There is no fresh salmon on the market; there is no fresh salmon on the market anywhere. Now there is chum salmon on the market, there is steelhead on the market, and for that particular reason it is a very valuable fish to the Nisqually River. It is a higher priced salmon; the steelhead is, too. It is around \$2 a pound or whatever. I don't know. It kind of varies up and down.

But I can only speak for the Nisqually River because I manage the Nisqually River and I am there all the time, managing that particular drainage.

Senator GORTON. Well, you said at the beginning of this answer that obviously each of the tribes manages the resource somewhat differently, and obviously in their own interest. I was interested if you know whether any of the tribes have decided that the steelhead is more valuable for recreational purposes and thus are managing it primarily or solely for that purpose rather than commercially. Do you know whether that's true?

Mr. FRANK. I haven't heard of any tribe as yet that is managing for a sport fishery, such as guiding or whatever you might want to say, that relates to steelhead. No, I haven't.

Senator GORTON. How many of the tribes, including your own, tax their commercial steelhead for revenue purposes for the tribe as against the individual fisherman? Is that done at all?

Mr. FRANK. I am not really sure but I am sure they all do. Senator Gorton. Do you?

Mr. FRANK. Yes.

Senator GORTON. What share of your tribal fisheries funds are spent on the enforcement of your regulations on commercial steelhead fishing?

Mr. FRANK. It is very small. It is very small. The money that is taken in by the tax goes back into the resource. It could be enforcement. It could be whatever, the management, or into whatever enhancement programs we have, or cleaning out streams or whatever.

Senator GORTON. Of the steelhead you catch, what share, if you know, are for ceremonial and subsistence purposes and what share are sold commercially?

Mr. FRANK. I don't have that particular number. On steelhead, Mr. Chairman?

Senator GORTON. Yes.

Mr. FRANK. I don't have that particular number.

Senator GORTON. Do you keep records of that?

Mr. FRANK. Yes; the Nisqually Tribe keeps records on their ceremonial and subsistence fishery.

Senator GORTON. Ok. Did any of the rest of your panel want to say anything?

Mr. FRANK. Yes; Jim, would you want to?

Senator GORTON. Please identify yourself for the record.

STATEMENT OF JAMES HARP, VICE CHAIRMAN, NORTHWEST
INDIAN FISHERIES COMMISSION

Mr. HARP. Mr. Chairman, my name is Jim Harp. I am the vice chairman of the Northwest Indian Fisheries Commission. I am the commissioner for the Quinault treaty area and I am also the fisheries manager for the Quinault Indian Nation. I have prepared written testimony. It has been submitted for the record.

Senator GORTON. Fine. We will have that and it will be a part of the record.

Mr. HARP. I would like to add a few comments. Mr. Frank has done an excellent job in presenting the views of the 20 tribes from the Northwest.

A couple more specific areas: Out on the coast of Washington where I am from, we do manage for both hatchery and wild steelhead, depending on the river drainage, and also we have had joint management agreements developed with the State—the Washington Department of Game—and the tribes in the last couple of years. In the past we have had a lot of fisheries advisory boards, but the last season we did not have any fishery advisory boards, which is an important step, we feel, toward better management of the resource.

I guess I will be prepared to answer some questions, too, when I am through.

[Mr. Harp's prepared statement follows:]

TESTIMONY OF JAMES HARP ON S 954, THE "STEELHEAD TROUT PROTECTION ACT", BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
JULY 11, 1985, IN WASHINGTON D.C.

Thank you for the opportunity to testify before your committee on S 954, a bill of great importance to the Indian people of the Pacific Northwest. My name is Jim Harp. I am the Fisheries Manager for the Quinault Nation and serve as the Northwest Indian Fisheries Commissioner for the Quinault, Quileute and Hoh Tribes.

If enacted into law, the steelhead decommercialization bill before this Committee would have grave consequences for the nation, Indian people, and the steelhead resource itself. Contrary to the claims of its advocates, S 954 is a treaty abrogation bill; its passage would break the solemn promises that the United States made to my people in the mid-1800's. Through treaties with the United States, we ceded title to millions of acres of land and received in exchange the promise of peace, land for our reservation homes, and the guarantee that we could continue to utilize the fisheries resources as we had since time immemorial to sustain our cultures and economies. Abrogation of our treaty rights for steelhead would reveal the human rights concerns enunciated by the United States as hypocrisy. The nation's cavalier attitude toward its treaty obligations would send a clear signal that this country regards agreements between nations merely as instruments of convenience, without true commitment.

For countless centuries, Indian fisheries have existed at the mouths of the Olympic Peninsula rivers that are world-reknown for trophy-sized steelhead. Steelhead have always been vital to the maintenance and continuity of our fishing cultures and economies. Over the millenia, a precious bond has been forged between my people and this resource.

For the coastal tribes, the availability of steelhead nearly year-round permits us to sustain our way of life as fishing societies. During the winter months, steelhead provides the only source of fresh fish to provide our people with food for sustenance and commodities for commerce. Fishing as a viable, indigenous economic enterprise that provides food, income and employment for Indian communities is crucial to our being. Decommmercialization of steelhead would bring disaster upon my people.

The so-called "Steelhead Protection Act", S 954, would not serve the resource. Because of our traditional dependence upon steelhead, we have managed these resources with diligence and care. It is no accident that the healthiest runs of wild steelhead in Western Washington are found in streams of the Olympic Peninsula where commercial and sport fisheries have shared the resource for several decades. We have proven beyond any reasonable doubt that the steelhead is not a "fragile" resource that can sustain only sport fishing. Steelhead runs on our rivers are

strong not in spite of Indian fishing, but because of it. The resource has not just survived the impacts of tribal use and management for thousands of years, it has thrived.

We manage steelhead as an integral part of the total production of fish from each river system. Our management philosophy is premised upon the belief that the spirits of steelhead will, if treated with honor and respect, cause these fish to voluntarily and compassionately give their bodies to men during times of need. For our people, the steelhead return at times of year when no other species of salmon are available. Historically, our harvest of steelhead was limited by the needs of tribal societies for food and commerce, natural environmental conditions, and commandments handed down from generation to generation by tribal custom and religion.

The success of tribal steelhead management has been recognized by the courts, scientific researchers, and sportsmen. On the coastal rivers, we pioneered development of fisheries management, catch reporting and escapement assessment systems for both salmon and steelhead. We do more than just catch fish, we help produce them through measures to protect and improve habitat and now operate an enhancement program that outplants 1.4 million steelhead in coastal rivers to benefit both treaty and nontreaty fishermen alike. Enactment of S 954 would deter future tribal investments in improving the status of the resource. The net effect of the "Steelhead trout Protection Act" on the resource would be deterioration of the steelhead runs under the politicized State mismanagement.

Ironically, the very success of our stewardship has chronically threatened to deny my people of their rights to continue to use the resource as guaranteed by treaties with the United States. The health of our runs and the diminishment of others have caused some sportsmen to want what we now enjoy.

The bill before this committee is nearly identical to S.874, legislation of the same name which was introduced by then newly elected Senator Gorton in 1981. When the "Steelhead Trout Protection Act" was first introduced, it was disguised as a conservation measure. Anyone with even an inkling of understanding and appreciation of the relationship between Indian people and their fisheries resources would have known that it was absurd to think that we would willfully damage a resource that serves as a cornerstone for our cultures and way of life. Nonetheless, hearings of incredible acrimony and emotion were conducted. Considerable testimony was presented which refuted the claims of a resource crisis caused by Indian fishing. As had been demonstrated in the courts before, claims of Indian over-fishing were found to be myths before this Committee (see Woodcock, Timothy C., Background Memorandum on the Steelhead Trout Fishery in the Northwest United States, Prepared for the Senate Select Committee on Indian Affairs, April 1982).

Proponents of S 954 have now openly admitted that the

purpose of the bill is to deprive Indian people of their treaty-protected rights to fish commercially for steelhead. Specious arguments favoring decommmercialization still abound, cloaking greed and hypocrisy in the confusion of numbers, the altruism of "conservation", and the guise of economic benefit. The issue has become so clouded with rumors, allegations, and misrepresentations that it is nearly impossible for anyone who is not intimately familiar with the situation to sort fact from fiction.

The players may have changed, but the tactics have not. The spread of malicious propaganda is hardly new among people bent on depriving Indian people of their rights. In 1940, the Taholah Agency Superintendent reported to the Commissioner of Indian Affairs on a similar controversy:

By reason of the controversy that has extended over the past five years over fishing rights claimed by the Indians on the one hand and the State Game Officers and Sportsmen Clubs on the other hand, a lot of animosity has arisen against the Indians, especially recently, because of attempts through legal means to establish their claimed Treaty Fishing Rights. Some of the so-called Sportsmen Clubs and their spokesmen, such as E.M. Benn and others, claiming to represent such clubs, have been indulging in false and misleading propaganda against the Indians, the Indian Department and Officers of this Agency with the evident purpose of creating discredit and bias and to attempt to place restraint against the Indians and the Indian Officers in order to prevent them from successfully prosecuting to a judicial determination the lawful rights claimed by the Indians under their Treaties and the Laws of this State. Some of these spokesmen and representatives have even gone to the extent of misrepresenting the conditions and true facts and circumstances to the United States Attorney General, members of Congress, and other Department Officers. It now seems clearly evident that they aim to accomplish through political means and other means of intimidations, that which they feel may be achieved by the Indians through the orderly processes of the Courts (March 14, 1940, File 554, Records of the Taholah Agency, Records of the Bureau of Indian Affairs, RG75, Federal Archives and records Center, Seattle).

Truly, the weapons of intimidation have changed from nightsticks to statistics as the battlefield over steelhead has moved from the rivers to the Congress. In 1981, a preliminary report entitled "Facts and Fallacies About Steelhead Decommmercialization" was prepared to address some of the more common myths. This document, although not updated with data for recent years, nonetheless remains perfectly valid and relevant. I ask that it be incorporated as part of the official record of this hearing.

The principal rationales cited by proponents for decommercialization still lie in "equal opportunity" arguments and the assertion that steelhead are somehow more valuable to sportsmen than to Indian people.

The notion that Indian treaties confer no more rights to members of signatory tribes than those held by other citizens of the State has been repeatedly struck down by the U.S. Supreme Court. Treaty tribes have enforceable property rights to steelhead: "the treaty guarantees the Indians more than simply the 'equal opportunity' along with all of the citizens of the State to catch fish, and it in fact assures them some portion of each relevant run" (Washington v. Passenger Vessel Association, 443 U.S. 679).

The argument that steelhead are more valuable for recreation than Indian uses demonstrates a complete disrespect for our value systems. "Value" is a matter of perspective and perspective changes depending upon position. An analogy might help clarify this somewhat abstract concept. Air is a resource that is so common and plentiful that most people wouldn't consider paying for it. But what if your child were to be locked in a seven-minute time vault with only five minutes of air? What would an extra breath or two be worth to you then? For many Indian tribes, the value of steelhead is incalculable because, like the air that can sustain life until the time-vault opens, it sustains the life of our fishing societies during the winter months when other resources are scarce.

Contrary to the assertions of the bill's proponents, if enacted, the legislation would abrogate treaty fishing rights for steelhead. Extensive litigation would assuredly result. The bill and supporting arguments are founded on the misrepresentation that treaty fishing rights are racially-based rather than their true nature as private property rights protected under the U.S. Constitution. (Instead of discussing the proposed legislation in detail, I have attached a legal analysis to my testimony as Appendix 2).

In anticipation of the need for compensation, the bill contemplates tribal action in the Court of Claims. Raising the ridiculous assertion that "granting" tribes the right to license sportsmen to fish on reservations (which they already have as part of their inherent sovereignty) is more valuable than current Indian uses, the bill would offset the value of licensing authority against damage claims. Such arguments denigrate the heritage and insult the values my people hold dear. Why is it so difficult for people to understand that we value different things? Dollars could not possibly even begin to compensate us for the damage to our priceless heritage and cultures which would be caused by the decommercialization of steelhead..

Why has this issue attracted so much attention? It is my opinion that steelhead decommercialization is but a smokescreen. Dispossession of the property rights of Indian tribes is the real

motivation behind supporters of legislation such as S 954. This bill was introduced in response to an intense campaign in the State of Washington by a group of individuals, organizations, and corporations that want to grab Indian resources for their own. Fish are not the seminal issue, Indian property is. The interests of S/SPAWN, the principal supporter of Washington State Initiative 456 that led to the introduction of S 954, are not limited to steelhead, but rather extend to Indian ownership of land, water, timber and minerals. This is but the first step in an insidious strategy to divest tribes of their resources.

In important respects, the passage of Initiative 456 by a narrow margin is a reflection of frustration among a badly misinformed public in the State of Washington over the seeming inability to deal effectively with the complex problems of salmon and steelhead management. The blame, however, has been wrongly placed upon the Tribes and their treaty fishing rights rather than where it belongs - on the unwillingness of certain segments of society and governments to work together.

Indian treaty rights stand at the last bastion to protect the fisheries resources of the Pacific Northwest. The Quinault, like many other tribes, has always recognized the potential benefits that could be derived through the establishment of strong working relationships with sportsmen to pursue common interests in improving resource management and protecting vital habitat. Within the last two years, tremendous progress has been made by people who have committed themselves to building a better future for the resource and those who depend upon it for their livelihoods and recreation. Tribes, the State of Washington, and enlightened sportfishing groups have found it far more rewarding to devote scarce resources to the cooperative resolution of common problems than by fighting one another.

The fruits of our labors have begun to ripen. This past steelhead season was among the best ever for both sportsmen and tribes. For the first time, management plans have been jointly developed by the fisheries staffs of the tribes and the Washington Department of Game. In the coastal rivers, returns from investments in hatchery production of steelhead have paid off handsomely for treaty and nontreaty fishermen alike. On the Queets River where I live, the fishing was phenomenal when the Quinault Nation opened the Salmon River tributary to sport fishing on-reservation in a new-found spirit of cooperation with local sport fishing groups such as the Grays Harbor chapter of the Northwest Steelhead and Salmon council of Trout Unlimited. For salmon, successful culmination of the U.S.-Canada Treaty after years of frustration serves as ample testimony of the incredible accomplishment possible when people decide to work together.

Sadly, those who stand to profit from confrontation continue to try to devise ways to interfere with processes of reason and reconciliation. Within the past few months, there has been a resurgence of controversy in the hope that Congress will reward

continued conflict by abrogating Indian treaty fishing rights.

The U.S. Civil Rights Commission aptly summarized the motivation behind keeping Indian rights within a maelstrom of political turmoil:

Their tactic has become increasingly clear: create as much discord, lawlessness, and chaos as possible..., attribute the problem to Indian treaty fishing rights, and then apply political pressure to induce Congress to resolve the matter at the expense of the group with the least political impact, the Indian Tribes.

Chaos will reign, say the hardcore of dissidents who refuse to work to constructive purpose while respecting and abiding by the law of the land, until they get their way. The price for peace for steelhead is of course decommercialization. Are some people so naive and blinded by their own fanaticism to have the steelhead dedicated exclusively to sportsmen that they really believe their preposterous proposition that decommercialization will improve relationships between Indians and non-Indians? We will never give up our rights to use the salmon and steelhead runs to meet our own needs.

The cancer of greed, racism and bigotry has once again to fester. The heat of controversy once more threatens to burst into the flames of confrontation.

Now is the time for healing, not conflict. The enormous resources consumed in an unproductive war of words and numbers can be far better spent in ways that work to replace divisive, destructive distractions with a climate of mutual trust and common purpose.

Sportsmen have their needs. We have ours. There is no rational reason why our needs cannot be compatible. Only when people of different cultures and values learn to understand and respect one another can the resolve and dedication be found to build a better future for the steelhead and all the people of the Pacific Northwest.

Thank you.

Senator GORTON. Well, if you wanted to make comments on any of the questions I asked of Mr. Frank about the way you manage steelhead, I would be happy to hear you.

Mr. HARP. OK. What was the order of them? A couple of comments. One was the recent question that you asked, whether we keep records of ceremonial and subsistence catches. The Quinault Tribe does keep records of their ceremonial and subsistence catches. They also tax their fishermen.

What were some of the other questions?

Senator GORTON. Do the Quinaults have a recreational fishery which is used for tribal income, by the use of guides or the like?

Mr. HARP. The Quinault River system itself is one of the few major river systems along the coast that is mainly or mostly on the reservation. It does provide a guide fishery. It's a different type of fishery because of the natural area out there that provides a different type of an experience for steelhead fishermen to go out with an Indian guide. It has been a fishery that has gone on for probably at least 50 years. It is something that is not new. Some of them use the traditional cedar dugout canoes to take their clients out there.

Senator GORTON. Is it a source of a substantial income for members of the tribe?

Mr. HARP. It is a lucrative type of business for guides to be in.

Senator GORTON. Are the steelhead in the Quinault mostly natural, mostly hatchery, or both?

Mr. HARP. The Quinault River system is mainly hatchery, mostly hatchery fish. Last year was one of the better runs on record for both the hatchery and the wild runs out on the coast, and of course with the good returns the catches were very high, too. Both the nontreaty sport catches and the tribal gill net catches were both at record levels.

Senator GORTON. Thank you, Mr. Harp.

Now do any of the other people here wish to make comments?

Mr. HARP. I had a couple of comments.

Senator GORTON. No, go ahead. Go ahead.

Mr. HARP. In my testimony, my written testimony, I would also like to include for the record a legal analysis that was prepared.

Senator GORTON. We will be happy to have that.

Mr. HARP. One other, back in 1981 we prepared a report entitled, "Facts and Fallacies About Steelhead Decommmercialization." We would like that included as part of the record also.

Senator GORTON. It will be.

Mr. HARP. OK. Thank you.

Senator GORTON. Thank you.

[The material referred to by Mr. Harp follows. Text resumes on p. 192.]

A PRELIMINARY LEGAL ANALYSIS OF S. 954

THE PROPOSED "STEELHEAD TROUT PROTECTION ACT"^{1/}
June 1985

INTRODUCTION

The "Steelhead Trout Protection Act" ^{2/}, S954, is the most recent attempt by Washington State Congressional representatives to abrogate Indian treaty fishing rights so that non-Indian sportsmen can enjoy increased recreational opportunities.^{3/} If the bill is enacted, treaty Indian fishermen would no longer be able to utilize the steelhead runs for economic, subsistence, and ceremonial needs as they have since time immemorial. By making all state steelhead laws applicable to treaty fishermen, the bill would require Indian fishermen to abandon their traditional fishing methods and values.

This memorandum explores legal ramifications of S954 by addressing the questions of whether an abrogation of treaty rights would occur, whether this legislation would exceed Congressional authority and violate any constitutional guarantees, whether the bill would result in substantial monetary claims against the United States, and finally, whether the bill is likely to resolve fishing controversies in Washington State.

SUMMARY**S954 would abrogate treaty fishing rights for steelhead**

In light of Supreme Court interpretations of the treaty fishing provision, the bill is clearly an abrogation of treaty fishing rights. It would legislate into the current management of Indian/non-Indian steelhead fisheries the old, misleading, and discarded concept of "equal opportunity." The United States Supreme Court has repeatedly rejected this so called "equal opportunity concept advanced by the bill's proponents. The Court has held that the "equal opportunity" which S. 954 would implement violates the treaty guarantee that Indians will be allowed to continue to satisfy their needs through the harvest of a share of each run of fish passing through their usual and accustomed fishing places (Washington v. Fishing Vessel Ass'n., 443 U.S. 658, 679-85 (1979)).

The Constitutionality of S954 is suspect

Notwithstanding the broad powers of Congress in Indians affairs, it is questionable whether this legislation is constitutional. S954 is likely to generate challenges to its validity, and, if upheld, would undoubtedly result in huge compensation claims against the United States for a Fifth Amendment taking of Indian tribal property rights.

S954 would undermine cooperative fisheries management efforts

Rather than resolving fishing controversies, this legislation would interfere with the healing process that is well under way. It would undermine implementation of the Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 95-561, which Congress enacted as a mechanism for increasing tribal/state cooperation on fisheries matters while preserving Indian treaty commitments. It would interfere with the cooperative efforts of the federal government, states, treaty tribes, and responsible user groups necessary to implement the recently negotiated Pacific Salmon Treaty with the Government of Canada. And it would terminate progressive and constructive programs undertaken jointly by the tribes, state management agencies and groups of sportsmen who have found ways to work together to improve the management and increase the supply of steelhead.

KEY PROVISIONS OF THE BILL

Section 2 declares U.S. treaty obligations and Indian subsistence, cultural, religious, and economic dependence on steelhead of lesser value than the recreational interests of sportsfishermen and state revenue from sport licensing fees. The bill declares that Indians "may" find greater commercial value in licensing non-Indian sportsfishermen on their trust lands and reservation waters, than by making full use of their existing treaty rights to steelhead in their usual and accustomed fishing areas.

Section 4 enlarges state authority over Indian steelhead fishing from the power to regulate for conservation necessity to the power to enforce all state steelhead fishing laws against treaty Indians, including the prohibition on commercial net fisheries (cf. United States v. Washington, 384 F.Supp. at 393 FF #221). This expansion of state authority applies to Indians both on and off reservations without exception. The bill does not provide for tribal consent to this increase in state jurisdiction, notwithstanding the existing consent requirements of federal law. This section also expressly abrogates or terminates Indian treaty rights to harvest steelhead.

Section 5 authorizes tribal licensing of non-Indian steelhead fishermen who wish to fish on Indian trust lands or in reservation waters. This is not a grant of some "new" power

which tribes did not previously possess. See e.g., New Mexico v. Mescalero Apache Tribe, ___ U.S. ___, 76 L.Ed.2d 611 (1983); Eastern Band of Cherokee Indians v. North Carolina Wildlife Commission, 588 F.2d 75 (4th Cir. 1978), cert. denied, 446 U.S. 960; United States v. Pollman, 364 F.Supp. 995 (D.Mont. 1973). The Quinault Indian Nation, for example, has licensed and regulated non-Indian fishing on its reservation for years. Section 5, however, does grant new powers to the states by authorizing concurrent state jurisdiction over on-reservation steelhead fishing by non-Indians.^{4/}

Section 4(c) terminates Indian treaty and property rights that are inconsistent with the bill and section 6 provides for the United States Claims Court to hear tribal "taking" claims that would result from the legislation. Section 6 establishes a three year statute of limitations and a set off against monetary awards to tribes for the value of the licensing authority over steelhead sportsfishermen which tribes are "granted" under the legislation. ^{5/} Thus one effect of this provision is to cut in half the current six year statute of limitations for "taking" claims (see 28 U.S.C. 1505, 2501; United States v. Mitchell, 443 U.S. 535, n.2 (1980)).

ANALYSIS

The treaty fishing right includes the right to harvest steelhead for commercial purposes free from state jurisdiction, except as necessary for conservation--The moderate living standard cannot serve to selectively eliminate Indian commerce in a particular species of fish

In introducing his steelhead decommercialization bill, Senator Gorton stated:

[T]his legislation in no way affects the tribe's treaty rights to fish at their usual and accustomed places, nor their right to engage in the fishery ... or alter their right to obtain a moderate standard of living from their treaty share of salmon.

Congressional Record, April 18, 1985.

Representative Swift who introduced a companion bill, H.R. 2136, stated:

One reason that the 97th Congress did not act on the decommercialization issue was because of a concern that it would abrogate Indian treaties. I do not believe that the bill that was proposed then, nor the bill I am introducing today, results in such an abrogation

Id.

These assertions by the sponsors of S954 are founded on very serious misrepresentations of the treaty fishing right. Several points should be emphasized.

First, the Supreme Court has specifically and repeatedly held that there is a treaty right to harvest steelhead with nets for both commercial and ceremonial and subsistence purposes. In Department of Game v. Puyallup Tribe, the Supreme Court said in regard to steelhead fishing:

Our prior decision [referring to a 1968 decision] recognized that net fishing by these Indians for commercial purposes was covered by the Treaty, 391 U.S. 398-399.

414 U.S. 44, 48 (1973)

The Court ordered that steelhead net fishing be allowed and that steelhead runs be apportioned between non-Indian sportsmen and Indian fishermen. The Supreme Court also held that a ban on all Indian net fishing, while hook and line fishing was allowed, was unlawful discrimination against Indian fishermen (see also, U.S. v. Washington, 384 F.Supp. at 403-404 C.L. 39).

Four years later, the Supreme Court again noted that:

...a complete ban on net fishing for steelhead trout by the Indians was precluded by the treaty.

Puyallup Tribe v. Department of Game, 433 U.S. 165, 167 n.1 (1977).

Second, the treaty right to steelhead fishing included the right to be free from state jurisdiction and laws except as shown necessary for conservation (Puyallup Tribe v. Department of Game, 391 U.S. 392, 395, 398 (1968)). In Washington v. Fishing Vessel Assn., 443 U.S. 658, 663 (1979), the United States Supreme Court, substantially affirming the lower court interpretation of the treaty fishing right in United States v. Washington, noted that:

...the State of Washington has attempted to reserve one species, steelhead trout, for sport fishing...

The Court noted that steelhead trout were important to tribes, 443 U.S. at 665, and held that:

...the purpose and language of the treaties are unambiguous; they secure the Indians' right to take a share of each run of fish that passes through tribal fishing areas.

433 U.S. at 679.

Relying on the Puyallup litigation for this proposition, the Court said:

...the Court in the context of a dispute over rights to the run of steelhead trout on the Puyallup River reaffirmed both of the holdings that may be drawn from Winans -- the treaty guarantees the Indians more than simply the "equal opportunity" along with all of the citizens of the State to catch fish, and it in fact assures them some portion of each relevant run.

443 U.S. at 681-682.

The Court went on to note that:

...Although under the challenged regulation every individual fisherman would have had an equal opportunity to use a hook and line to land the steelhead, most of the fish would obviously have been caught by the 145,000 nontreaty licenses rather than by the handful of treaty fishermen. The Court vindicated the Indians' treaty right to "take fish" by invalidating the ban on net fishing...

443 U.S. at 683; see also pp. 676-677 and n.22.

Lastly, the moderate living standard cannot serve to limit the type of fish which tribes can harvest. The moderate living standard only applies to the quantity of each fish run which tribes can harvest. It is to be used to determine their "fair share" of each run, not whether a particular run can be harvested at all. The only application of a moderate living standard which the Supreme Court approved was to:

...initially divide the harvestable portion of each run that passes through a "usual and accustomed" place into approximately equal treaty and nontreaty shares, and...then reduce the treaty share if tribal needs may be satisfied by a lesser amount.

443 U.S. at 685; see also, United States v. Washington, 384 F.Supp. at 342-344.

In his statement accompanying the bill, Senator Gorton recognized that the moderate living standard limited the "quantity" of anadromous fish which tribes could harvest. He then, however, leaps to the conclusion that Congress, in the absence of any conservation necessity, can decide for tribes which of the various fish runs they can rely upon to meet their future moderate living needs, without abrogating their treaty right.

The treaty right includes the exclusive right of each tribe to determine which runs its members may fish upon, absent a conservation necessity. As held by the district court, the power to regulate for conservation purposes:

...does not include the power to determine for the Indian tribes what is the wisest and best use of their share of the common resource.

United States v. Washington, 384 F.Supp. at 402; cf. 384 F.Supp. at 394, FF #222. 6/

The Bill May Exceed Congressional Authority

Courts have become less deferential to the notion that Congress may unilaterally breach, or "abrogate," the terms of an Indian treaty. While the abrogation of Indian treaty rights was once regarded as purely a "political" question, beyond the scope of judicial review, the Supreme Court has, in modern times, taken a more protective view and has scrutinized Congressional actions affecting Indian property interests for compliance with the Constitution (see, United States v. Sioux Nation of Indians, ___ U.S. ___, 100 S.Ct. 2716, 65 L.Ed. 2d 844, 874-875 (1980)).

The Fifth Amendment authorizes the United States to take private property for a public purpose, so long as just compensation is provided. The Supreme Court has enforced this just compensation requirement when tribes have established a Fifth Amendment taking of their property (see, United States v. Klamath and Moadac Tribes, 304 U.S. 119, 123 (1937); United States v. Southern Pacific Transportation Co., 543 F.2d 676, 686 (9th Cir. 1976)). Treaty fishing rights also require just compensation, if abrogated (Menominee Tribe v. United States, 391 U.S. 404, 407, 413 (1968)). The limits imposed by the "public purpose" requirement, in the context of United States/tribal relations, are as yet less clear. The United States' power to appropriate Indian property interests guaranteed by treaty and important to tribal self-sufficiency and cultural preservation would require far more compelling circumstances and consideration of treaty obligations than are apparent in this bill.

Even when more deference was given to a Congressional decision to abrogate, the Supreme Court suggested limitations on the circumstances under which the power should be exercised:

The power exists to abrogate the provision of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in

Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians.

Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903)(emphasis supplied); see also Shoshone v. United States, 299 U.S. at 497; Federal Power Com. v. Tuscarora Indian Nation, 362 U.S. 99, 124 (1960).

There is also more recent precedent for arguing that the application of Fifth Amendment protections to Indians requires special consideration of the United States' unique Indian guardianship responsibilities. In examining whether certain federal Indian legislation violated a tribe's right to equal protection, the Supreme Court analyzed the statute to determine if it

...can be tied rationally to the fulfillment of Congress' unique obligation towards Indians...

Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73, 84-85 (1976).

In determining whether Indian property has been "taken," courts have viewed the United States as capable of wearing two hats, one as a trustee acting in the best interests of Indian people, and the other, as an appropriator of Indian property with other interests in mind. The latter "hat" requires just compensation (see United States v. Sioux Nation of Indians, 65 L.Ed.2d at 844, 871, 876). But this split personality concept has arisen in cases where the taking was a "fait accompli." In those cases, tribes were not challenging the power of Congress to have done what it did, but rather were claiming compensation for past wrongs. The Supreme Court appears to have left open the possibility that a tribe could challenge the constitutionality of a Congressional decision to abrogate a particular treaty right (Id. n.27 and 28). While the two hats theory may serve to redress past wrongs, it seems inappropriate in evaluating the constitutionality of recent Indian legislation, particularly in view of modern-day concepts of federal responsibilities towards Indians (see Seminole Nation v. United States, 316 U.S. 286, 296-297 (1941); United States v. Mason, 412 U.S. 391, 398 (1973); Chambers, "Judicial Enforcement of the Federal Trust Responsibility to Indians," 27 Stanford Law Review 1213, 1228-1230 (1975); United States v. Mitchell, 445 U.S. 535, n.7).

The proposed bill would offer a particularly compelling set of facts in which to test the limits of the abrogation power. Here, the United States has, in its capacity as trustee, spent large sums of money and time vindicating the Stevens treaty fishing rights, and protecting those rights from the very same incursions the bill proposes. It has successfully argued in court that application of a ban on fishing for steelhead with

nets to treaty Indians illegally discriminates against Indians by placing them at a substantial disadvantage in harvesting the fish they need (see United States v. Washington, 384 F.Supp. at 399, 403-404; Washington Game Department v. Puyallup Tribe, 414 U.S. at 44, 46-57). Congress, moreover, in 1980 provided a mechanism for the tribes and state to cooperate in dealing with fishery concerns, and to increase the supply of steelhead for the benefit of both treaty fishers and sportsfishermen, rather than usurp Indian treaty rights. That legislation repeatedly affirms Congress' intent to preserve without limit the tribes' treaty fishing rights (see Salmon and Steelhead Conservation and Enhancement Act of 1980, PL 96-561). A decision to abandon this approach which is now being implemented would be very difficult for Congress to justify, under the most generous rational basis test.

At the very least, the tribes are entitled to the same requirement of "public purpose" as is generally afforded others in regard to Fifth Amendment takings of their property interests. Although the Congressional power of eminent domain is broad, a number of cases have held that simply increasing public fishing or hunting opportunities is not a "public purpose," justifying condemnation (see Peavy-Wilson Lumber Co. v. Brevard County, 172 ALR 168, 31 S.2d 483 (Fla.S.Ct. 1947); Swan Lake Hunting Club v. United States, 381 F.2d 238, 241, 245 (5th Cir. 1967)). It should also be noted that the bill may actually have detrimental effects on sportsfishermen in terms of the loss of tribal steelhead data and management expertise, as well as tribal efforts to protect and enhance the steelhead resource.

If the bill becomes law and is upheld as a valid exercise of Congressional power, substantial questions regarding compensation will have to be litigated

While no court has specifically addressed the question of whether Stevens treaty fishing rights may be abrogated to benefit steelhead sportsfishermen, the tribes' entitlement to just compensation for an abrogation is clear (see Menominee Tribe v. United States, supra). Determining the amount of "just compensation," however, will prove difficult.

There is little, if any, precedent for how to place a monetary value on Indian fishing rights. In one case, a method was proposed, but the court did not have to reach the value question because it found no taking. The method proposed was a complicated one comparing the profitability of the fish processing industry to the yield of alternative capital investment in industries with comparable risks (see Tlingit and Haida Indians of Alaska v. United States, 389 F.2d 778, 784-785 (Ct. Cl. 1968)).

In Whitefoot v. United States, 293 F.2d 658, 155 Ct.Cl. 127 (1961), the tribes and Army Corps of Engineers had agreed to capitalize, at 3%, the total value of fish harvested by the

tribes on a stretch of the Columbia. The value calculated for a ten mile stretch of river amounted to \$26,888,395.32.

The rivers and tribes affected by S954 are far more extensive. Tribal enterprises, such as processing plants, retail outlets, and seafood restaurants, may also be adversely impacted. The availability of steelhead nearly year-round also makes this resource of special significance in the maintenance of tribal fishing cultures and religions. The measure of just compensation may well be impossible because of the unique rights involved (see United States v. Washington, 384 F.Supp. at 404, 406-407).

The proposed "set off" for the value to tribes of licensing authority also will undoubtedly require substantial litigation. Tribal licensing of non-Indian steelhead fishermen on reservation waters is not a new right or phenomenon in Washington State. It has long been recognized and implemented in 1927-29 Opinions of the Attorney General of the State of Washington, supra; Pioneer Packing v. Winslow, supra. It is not a new right for which tribes will be willing to pay in the form of some set off against their damage claims. The bill's authorization for two sets of licensing requirements (state, as well as tribal) may actually create additional damages through a loss in revenue for those tribes, who find it economically unfeasible to impose double licensing (cf. New Mexico v. Mescalero Apache Tribe, supra; Eastern Band of Cherokee Indians v. North Carolina, supra).

In short, the bill's proponents seem bent upon generating more litigation over treaty fishing rights. Whatever the ultimate determination of these issues, there will be tremendous costs not only in the form of compensation to tribes but also in resolving the many legal questions raised by the bill.

CONCLUSION

This is not the first time that the Congress has been asked to consider abrogating the treaty rights of Indians because of complaints by Washington State sportsfishermen. In 1940, the Taholah Agency Superintendent reported to the Commissioner of Indian Affairs on a similar controversy:

By reason of the controversy that has extended over the past five years over fishing rights claimed by the Indians on the one hand and the State Game Officers and Sportsmen Clubs on the other hand, a lot of animosity has arisen against the Indians, especially recently, because of the attempts through legal means to establish their claimed Treaty Fishing Rights. Some of the so-called Sportsmen Clubs and their spokesmen, such as E.M. Benn and others, claiming to represent such clubs, have been indulging in false and misleading propaganda against the Indians, the Indian Department and Officers of this Agency with the evident purpose of creating discredit and bias and to attempt to place

restraint against the Indians and the Indian Officers in order to prevent them from successfully prosecuting to a judicial determination the lawful rights claimed by the Indians under their Treaties and the Laws of this State. Some of these spokesmen and representatives have even gone to the extent of misrepresenting the conditions and true facts and circumstances to the United States Attorney General, members of Congress and other Department Officers. It now seems clearly evident that they aim to forestall through political means and other means of intimidations, that which they feel may be achieved by the Indians through the orderly processes of the Courts.

Letter to the Commissioner of Indian Affairs from the Superintendent of the Taholah Indian Agency, March 14, 1940, File 554, Records of the Taholah Agency, Records of the Bureau of Indian Affairs, RG75, Federal Archives and Records Center, Seattle.

In hearing testimony on the bill, members of Congress would be well advised to scrutinize carefully the allegations that are being made about the adverse impact of Indian fishing on the steelhead resource. In responding to claims of overfishing by Indians, the federal court found:

Notwithstanding three years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a definitely identified member of any plaintiff tribe exercised his off-reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.

Unfortunately, insinuations, hearsay and rumors to the contrary, usually but not always instigated anonymously, have been and still are rampant in Western Washington. Indeed, the near total absence of substantial evidence to support these apparent falsehoods was a considerable surprise to this court

U.S. v. Washington, 384 F. Supp. 338-9, n 26.

S954 is sponsored and promoted by elements of the State which played major roles in the extensive treaty fishing rights litigation of the 1960's-1980 era. The controversy in large part is the responsibility these factions and, as the Ninth Circuit Court of Appeals described it, of "[Washington's] extraordinary machinations in resisting the [court's] decree..." (Id., n. 36). In the years following the decision of the federal court in U.S. v. Washington, the conflict over treaty fishing rights spawned by the actions of State officials and non-Indian fishermen became so intense that the Supreme Court and Ninth Circuit Court of Appeals

characterized the situation as one of "the most concerted official and private efforts to frustrate a decree of a federal court witnessed in this century" (Id.).

The proposed legislation will fuel a dying conflict over a legal controversy that has finally been resolved by the courts. It is far from clear that Congress could, consistent with the constitution and its special obligations to Indians, lawfully adopt this bill. If the bill is enacted into law, substantial questions as to whether the action is within the powers of United States. If the bill is determined to be valid, abrogation of Indian fishing rights will generate additional, expensive and time consuming litigation over the proper measure of just compensation.

In the last several years, Congress has established new vehicles for state/tribal cooperation and state management agencies, treaty tribes and some progressive sportsmen groups have found it far more productive and rewarding to work together in common purpose than to pursue conflict and confrontation. The bill's proponents would better advance the interests of steelhead through these mechanisms without abrogating Indian treaty fishing rights (see Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 96-561; Pacific Salmon Treaty Act of 1985, P.L. 99-5).

If the bill passes, the cooperative, constructive spirit that has only recently begun to bloom will quickly fade. The healing process necessary to effectively advance all Washington State fishery interests will be sorely tested.

FOOTNOTES

- 1/ This legal analysis was originally prepared by Allen Sanders in connection with S. 874, a virtually identical bill, introduced by Sen. Gorton in 1981. It has been edited and updated to reflect changes in the proposed legislation and developments in the law since 1981.
- 2/ The title of the proposed bill is clearly a misnomer. It may be intended to suggest that some legitimate steelhead conservation concern prompted its drafting. However, outlawing traditional, treaty guaranteed Indian steelhead fishing activities is not a measure necessary for the conservation of steelhead runs. Under current law, state regulation of Indian steelhead fishing for legitimate and necessary conservation purposes is permissible (see, Puyallup Tribe v. Department of Game, 391 U.S. 392, 398 (1968); United States v. Washington, 384 F. Supp. 312, 342, 401-402 (W.D. Wash. 1974); Sohappy v. Smith, 302 F.Supp. 899, 908-909 (D. Or. 1969)). The state's view of the best and wisest use of steelhead cannot preempt the tribes' right to determine the wisest use of its treaty share. *Id.* It would be more appropriate to call the bill the "Washington State Sportsmen Protection Act." Steelhead are not endangered by treaty fishing and there is no conservation necessity requiring treaty abrogation (see United States v. Washington, 384 F.Supp. at 338, n.26, 375 FF# 127, 393 FF#221, 398 FF# 244, 246, 247; Sohappy v. Smith, 302 F.Supp. at 911; Woodcock, T.C., Background Memorandum on the Steelhead trout Fishery in the Northwest United States, Prepared for the Senate Select Committee on Indian Affairs, April 1982).
- 3/ Three times, in the early 1960's, Congress rejected efforts to terminate treaty fishing rights (see S.J. Res. 170 and 171, 88th Cong. 2d Sess. (1964); H.J. Res. 48, 88th Cong., 1st Sess. (1963); H.J. Res. 698, 87th Cong. 2d Sess. (1962); cf. Washington v. Fishing Vessel Association, 443 U.S. 658, 693, n.33 (1979)). Similar and more recent efforts to have Congress breach its Indian treaty commitments have also failed (e.g. Representative Cunningham's bill to abrogate all Indian treaty rights introduced in the 95th Congress. H.R. 9054, September 12, 1977; Senator Gorton's 1981 bill, S. 874).
- 4/ In New Mexico v. Mesecalero Apache Tribe, ___ U.S. ___, 76 L.Ed.2d 611 (1983) the Supreme Court held that the Mesecalero Tribe has exclusive jurisdiction over the licensing and regulation of non-Indian fishing and hunting on the tribe's reservation. In so holding the Court distinguished Montana v. United States, 450 U.S. 544 (1981) in which the Court had held that Montana rather than the Crow Tribe was entitled to regulate fishing on non-Indian owned lands within the Crow Reservation. The Court noted that even in Montana it had

acknowledged that "Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." And, it went on to stress that in Montana the Crow Tribe did not allege that non-Indian hunting and fishing impaired the Tribe's reserved hunting or fishing privileges, or that non-Indian hunting and fishing imperiled the welfare of the tribe. Furthermore, the Court noted that the record in Montana failed to suggest that non-Indian hunting or fishing threatened the tribe's economic or political security. New Mexico, supra, n.12 at 618.

Unlike the Crow to whom fishing was not found essential, fishing has been characterized as not much less necessary to the survival of Northwest Indian Tribes than the air they breathe. See, United States v. Winans, 198 U.S. 371 (1905). And, unlike the Crow, Northwest Treaty Tribes possess exclusive on-reservation fishing rights. See e.g., Washington v. Fishing Vessel Ass'n., supra; United States v. Washington, 694 F.2d 188 (9th Cir. 1982). Thus the circumstances of most Northwest Treaty Tribes are much closer to those of the Mescalero Tribe, as found in the New Mexico case than they are to those of the Crow. In 1928, for example, a Washington State Attorney General in an opinion concluding that the Quinault Tribe has exclusive jurisdiction over reservation waters observed that the existence of state authority to regulate on-reservation fishing "would serve to defeat the primary object of the government in establishing the reservation" (1927-28 Opinions of the Attorney General of the State of Washington, 783, 788 (June 22, 1928)). See also, Pioneer Packing v. Winslow, 159 Wash. 655, 662, 294 P. 557 (1920)).

5/ This setoff provision is likely to lead to substantial litigation. As discussed above, the tribal right to license non-Indian sportsmen to fish in reservation waters is not a new power granted by this legislation. Moreover, the fact that this legislation would require non-Indian sportsmen to obtain both state and tribal licenses may actually lead to a loss of revenue for some tribes which presently only require tribal licenses for on-reservation fishing.

6/ Even if the moderate living standard could be applied to limit the type of fish which tribes are entitled to harvest, there is little likelihood that it could be demonstrated that steelhead net harvest exceeds the tribes' moderate living needs. Aside from the fact that even after Washington tribes substantially increased their catch of both salmon and steelhead pursuant to court-affirmation of their treaty-protected fishing rights, the degree of poverty among Indians in Washington State remains startling, (see Relationship Between Washington and Its Reservation-Based Tribes, August 1978, pp. 24-44; see also, United States v. Washington, 506 F.Supp. 187, 208 (1980), affirmed in part and vacated in part, ___ F.2d ___ (9th Cir. 1985)), steelhead runs are unique in that they supply a winter commercial

and subsistence fishery for a number of tribes and thus play a highly significant role in maintaining tribal fishing communities, in diminishing Indian dependence on public assistance and in promoting Indian economic self-sufficiency. The social costs, as well as the cultural and religious importance (cf. 443 U.S. at 665 and notes 6 and 7) of steelhead fishing, cannot be ignored in evaluating tribal needs.

PRELIMINARY DRAFT

FACTS AND FALLACIES ABOUT
STEELHEAD DECOMMERCIALIZATION

by

Gary S. Morishima, Ph.D.

and

Susan K. Hvalsoe, Attorney At Law

August 31, 1981

Appendix by Allen Sanders, Attorney-at-Law

FACTS AND FALLACIES ABOUT STEELHEAD DECOMMERCIALIZATION

A B S T R A C T

The controversy surrounding treaty Indian fishing for steelhead "Salmon gairdneri" has been characterized for several decades by the proliferation of countless rumors, allegations, mispresentations and outright falsehoods apparently designed to prejudice public opinion to favor decommercialization. While arguments opposing Indian fishing have been raised with various degrees of subtlety and sophistication over the years, they have remained virtually unchanged in substance. Facts and fallacies concerning the most prominent and persistent contentions advanced by proponents of steelhead decommercialization are critically examined within this report.

EXECUTIVE SUMMARY

- * In April 1981, Senator Slade Gorton and Congressman Don Bonker of Washington State introduced the "Steelhead Trout Protection Act", S.874, into the United States Congress.
- * The bill seeks to abrogate the treaty fishing right to harvest steelhead in order to allocate the resource exclusively for the special interest and purpose of sport fishing. S.874 does not concern protection of the resource.

"Conservation" arguments advanced by proponents of steelhead decommercialization are based upon semantic manipulations. The courts have determined that Indian fishing poses no threat to the resource.

There is no true run conservation problem caused by Indian fishing for steelhead. It would be absurd for Indians to willfully damage a run that is so integral to their cultures and economies and in which they have a direct and enforceable property interest.

- * Under the stringent management standards now prescribed by the federal courts, both the resource and the treaty fishing right are protected. The procedural process employed in the regulation of steelhead involves a determination of the number of fish that can be safely harvested from each run without harming the resource. If a steelhead run is so depressed that it is incapable of sustaining any harvest at all, then neither Indian nor sport fishing can be permitted on that run. Where harvestable numbers of steelhead are available, the opportunity to take a portion of the catch must be shared between treaty and non-treaty interests according to the allocation standards prescribed by the courts.
- * The introduction of S.874 marks the fifth time since 1977 that Congress has been asked to consider the identical question of whether Indians should be deprived of their treaty fishing rights and subjected to state regulations. In order to facilitate the resolution of long-standing fishery problems of the Pacific Northwest, the Congress, as recently as December 1980, enacted legislation, P.L. 96-561, the "Salmon and Steelhead Conservation and Enhancement Act of 1980," designed to encourage state, federal and tribal interests to work together in a common direction for the benefit of the resource and the fishery.

Introduction of S.874 has seriously undermined the cooperative spirit that led to the passage and broad support of P.L. 96-561 just a few short months ago.

- ° As evidenced by the testimony presented at the June 29, 1981, hearings on S.874 held in Seattle by the Senate Select Committee for Indian Affairs, decommercialization of steelhead is favored only by a narrow special interest representing sportsmen and is opposed by a wide spectrum of interests including:

The Church Council of Greater Seattle

The American Friends Service Committee

The Washington State Catholic Conference

The American Lutheran Church

The National Coalition to Support Indian Treaties

Various groups of commercial salmon fishermen

The Sierra Club

The Clark and Skamania Fly Fishers.

The testimony of the Clark and Skamania Fly Fishers characterized S.874 as a destructive, devisive distraction that, if enacted, would ultimately leave sportsmen with a hollow victory:

"Sportsmen must begin to re-examine the Indian issue from the standpoint of reality rather than emotion. The Indians have proven themselves as a powerful, national political power, who have consistently fought for the correct conservation issues that directly protect adult steelhead, down-stream smolts, and juvenile rearing habitat.

"Few Northwest rivers still maintain really strong runs of wild spawning steelhead and it is no accident that a strong proportion of these happen to be on rivers that have Indian reservations that use, protect, and in some instances even enhance their wild populations --rivers such as the Quinault, Queets, Hoh, Deschutes, and Klickitat being among them. Unless Indians can continue to catch these steelhead commercially, there will be no reason for them to protect steelhead habitat and certainly no reason for enhancement projects such as that on the Quinault river where steelhead are selected and reared in the best managed quality steelhead hatchery program south of the Canadian border--a management that fulfills the Quinault's commercial needs and provides for excellent adult escapement for anglers and wild spawning.

"I urge you all to look at the Indians as an ally towards the preservation of steelhead despite spiritual, philosophical, and economic differences concerning the manner in which steelhead are harvested. The Indians and the sportsmen are user groups taking approximately equal numbers of steelhead. Beyond that are giant corporate and political forces that are systematically destroying habitat and managing water flows in direct conflict with fish production. If we as sportsmen choose to arrogantly fight that battle alone, the conclusion is inevitable - anadromous runs on the Columbia River will simply cease to be. Wild steelhead runs on many smaller rivers will be drastically compromised - perhaps, too, eliminated."

Testimony of Mr. Bill MacMillan of the
Clark and Skamania Fly Fishers.

- Contrary to assertions by S.874's proponents, fishing for steelhead by treaty Indians is not some new phenomenon resulting from federal court decisions. The steelhead is indigenous to the Pacific Northwest and has been used by Indian tribes as an important element of their cultures, religions, and commerce for thousands of years. The 1974 decision of Judge George Boldt in the case United States v. Washington and its subsequent appeals are only the last of a lengthy series of interventions required by the federal courts to end the wrongful and discriminatory actions taken by the State of Washington to negate the fishing rights reserved by Indian tribes through the treaties with the United States.
- One of the principle sponsors of the steelhead decommercialization legislation, Senator Gorton, served as Attorney General for the State of Washington at the height of conflict and controversy over treaty Indian fishing. During this period of time, collusive legal and political manipulations by the State and some of its vocal non-Indian commercial and sports fishermen served to frustrate the decrees of the federal court and maintain the fisheries in such continual chaos that the Ninth Circuit Court of Appeals was forced to take special judicial notice of the orchestrated recalcitrance.
- Upon learning of the introduction of S.874, a religious leader in the Seattle community and long time observer of the fishing rights controversy in the Northwest, suggested that the continued determination of Senator Gorton to abrogate Indian treaties smacks of a personal vendetta. Calling upon Senator Gorton to put his energies to more productive purposes, the religious leader wrote:

"I urge you to abandon your long standing harrassment of the Indians of the Pacific Northwest and to join with them and with all people of good will who are interested in this issue to enhance the fishery for all the people of the region by urging Congress to encourage the State of Washington and the tribes to work together to develop a well coordinated program of management and enhancement of the

resource, to work to halt the principal causes of the depletion of the fishery, namely pollution and overdevelopment, and to heal the deep wounds caused by this wrongly directed attempt to deprive Indians of rights guaranteed them by treaties and upheld by the entire federal judicial system."

Charles W. Mays, Pastor of the Lord of Life Lutheran Church, before the Senate Select Committee hearings on S.874 on June 29, 1981, in Seattle, Washington.

- * At the very crux of the steelhead controversy lies a refusal to respect and abide by the law of the land and I believe that well organized and financed political pressure will reward continued lawlessness at the expense of a politically vulnerable minority.
- * The arguments and selective statistics presented by pro-decommercialization interests are highly misleading. Factual evidence demonstrates that if any fishery poses a danger to steelhead runs, it's the one conducted by sportsmen, not Indians.
- * The myth of Indian overfishing has frequently been perpetuated with the cooperation and assistance of the Washington Department of Game, the official state agency responsible for serving the interests of sportsmen and recreation.
- * As justification for deccommercialization, sportsmen allege that steelhead is far more valuable for recreational than commercial purposes. The "value" arguments employed by sportsmen not only fail to recognize and respect the unique values steelhead holds for treaty tribes, they are based upon economically fallacious premises.
- * In support of S.874, proponents argue that the cost of steelhead management exceeds the commercial value of the fish for Indians. Such an argument not only ignores the true multi-dimensional values of steelhead to Indian tribes, it rests upon the false presumption that only the treaty Indian fishery requires regulation. The actual costs of controlling and regulating the sports fishery so as to protect the resource are neither considered nor recognized. As with public recreation generally, sport fishing is not paid for by the direct beneficiaries of the service provided by the resource; the cost of subsidizing the recreational enjoyment of sportsmen is borne by the public and the resource.

Introduction

In April, Senator Slade Gorton and Congressman Don Bonker of Washington State introduced a bill entitled "The Steelhead Trout Protection Act of 1981" into the Congress of the United States.¹ The introduction of this legislation marks the fifth time since 1977 that the Congress has been asked to consider the identical question of whether Indians should be deprived of their treaty-protected fishing rights and subjected to regulation by the State of Washington.² The previous legislation has failed as the Congress and the Executive Branch have recognized that the approach only invites a reincarnation of assimilation and termination policies which both Republican and Democratic administrations have unequivocally dismissed as being ill-advised.³ The United States Helsinki Watch Committee reviewed those policies and legislative proposals in 1980, and condemned them as reflecting racial and cultural discrimination:

This attitude may be characterized as discriminatory because it implies a desire to compel the assimilation of Indians to the values and attitudes of a different culture, and it seeks to deny them the exercise of special treaty-based rights and cultural mores that set them apart from other citizens.⁴

As if to deny its discriminatory nature, the campaign of Senator Gorton and Congressman Bonker and their sportsmen constituencies to decommercialize steelhead has been cloaked in the rhetoric of "resource conservation," as is attested to by the title of the bill. But, in reality, the legislation has nothing to do with any biological or "conservation" concern for fish. This legislation would not protect the steelhead. Rather, it responds to the special interest politics and currents of racism in Washington State by proposing to allocate steelhead to a special interest group (Washington State sportsmen) at the cost of the United States' honor and abrogation of the United States' solemn promises made in the treaties to Indian tribes of the Pacific Northwest.

The sponsors of this legislation forget that the United States entered into these treaties of peace and friendship in furtherance of the national and public purpose of extinguishing Indian land titles to make way for non-Indian settlement. In exchange for millions of acres of land, the United States guaranteed that these Indian tribes' fishing economies and way of life would be forever secure, and assured them of the United States' honor and good faith in abiding by its promises.

As with the bills that preceded it, the Steelhead Trout Protection Act of 1981 has been accompanied by a number of misleading arguments and rhetorical statements by its sponsors and supporters. The purpose of this report is to examine some of the more prevalent myths which have reached the Congress and the public.

MYTH: THE "BOLDT DECISION" GAVE INDIANS THE RIGHT TO SELL STEELHEAD
COMMERCIALLY

The fish known as steelhead (*Salmo gairdneri*) is an indigenous resource of the Pacific Northwest. Like salmon, the steelhead is anadromous; this is to say, it is born in the freshwater streams of the Northwest, migrates to the sea for a significant part of its life, and then returns to its stream of origin to spawn a new generation of steelhead. Steelhead has been an important item of trade between Indian tribes for thousands of years and, for the past two hundred years it has been significant in commercial transactions between Indian tribes and non-Indian settlers. Steelhead, like the other anadromous fish, is a traditional item of commerce for Northwest tribes--this use simply was not an invention of the "Boldt Decision."

One hundred and twenty-five years ago when the relevant treaties were signed, anadromous fish were even more important to most of the population of western Washington than they are today. At that time, about three-fourths of the approximately 10,000 inhabitants of the area were Indians. Although in some respects the cultures of the different tribes varied . . . all of them shared a vital and unifying dependence on anadromous fish.

Religious rites were intended to insure the continual return of the salmon and the [steelhead] trout; the seasonal and geographic variations in the runs of the different species determined the movements of the largely nomadic tribes. Fish constituted a major part of the Indian diet, was used for commercial purposes, and indeed was traded in substantial volume. The Indians developed food preservation techniques that enabled them to store fish throughout the year and to transport it over great distances. They used a wide variety of methods to catch fish, including the precursors of all modern netting techniques . . .

Washington v. Fishing Vessel Ass'n., 443 U.S. 658 at 664-665 (1979).

Although Indians always continued their traditional commercial fisheries for steelhead on their reservations, after the turn of the century the state of Washington was generally successful in preventing the exercise of treaty-protected fishing rights off the reservations. By the unilateral imposition of state regulations, and through physical violence and harassment by state law enforcement officers and by sportsmen, the state largely prevented treaty Indians from conducting their traditional steelhead fisheries until 1974 when the federal courts explicitly directed the implementation of treaty fishing rights in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974) aff'd., 520 F.2d 676 (9th Cir. 1975), cert. denied 423 U.S. 1086 (1976), the so-called "Boldt Decision."

United States v. Washington was far from the first of the federal court actions required to reverse the wrongful and discriminatory measures taken or attempted by the state of Washington to negate the fishing rights reserved by Indian tribes in their treaties with the United States. Attempts by the state and some of its citizens to prevent Indians from exercising their treaty-pro-

ected rights had forced the United States to become involved in litigation over a period spanning nearly one hundred years.^{6/} The lengthy history of litigation has been based upon the prolonged and heated debate, fueled by the state's actions, over the interpretation of twenty-six words contained in each of six treaties^{7/} between various Indian tribes of the Pacific Northwest and the United States.^{8/}

The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory . . .

Seven times the state of Washington has argued before the United States Supreme Court that this treaty language means that Indians have no greater rights to take fish than any other citizens of the state. Each time, beginning in 1905 in United States v. Winans, 198 U.S. 371, and most recently in 1979 in Washington v. Fishing Vessel Ass'n., 443 U.S. 658, the Supreme Court has emphatically rejected the State's contentions.^{8/}

The Court has repeatedly determined that the treaties at issue were negotiated in good faith by the Indian tribes and the United States as a peaceful means of facilitating settlement of the Northwest while preserving to the tribes their traditional fisheries and livelihoods. In the mid-1850's, when the treaties were signed and ratified by the Congress, the United States' interest was in eliminating future claims to land title so that the territory could be opened for non-Indian homesteading. The Indian tribes that inhabited the area were willing to agree to the treaties so long as their rights in their traditional fisheries were secure so they could continue their way of life as fishing societies. Through the treaties, then, a bargain was struck. The tribes ceded their claims to millions of acres of land and received in return the promise that the United States would protect their rights to fish and to rely upon their fisheries as they always had for countless generations before.

Since the treaties were ratified the federal Courts have reviewed them on countless occasions and have determined that "a treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations." Washington v. Fishing Vessel Ass'n., supra at 675. As such, they are the "supreme Law of the Land," protected under Article VI of the U.S. Constitution:

"The Constitution . . . of the United States . . . and all treaties made . . . shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

See e.g., United States v. Washington, 384 F.Supp. at 330.

To the Indian tribes, the right to take fish was the single most important provision of the treaties.

From the earliest known times, up to and beyond the time of the . . . treaties, the Indians comprising each of the treating tribes and bands were primarily a fishing, hunting and gathering people

dependent almost entirely upon the natural and vegetative resources of the region for their subsistence and culture. They were heavily dependent upon anadromous fish for their subsistence and for trade with other tribes and later with settlers. Anadromous fish was the great staple of their diet and livelihood. They cured and dried large quantities for year around use, both for themselves and for others through sale, trade, barter and employment.

Washington v. Fishing Vessel Ass'n., *supra*, at 665, n. 6.

At the time of the treaties, the Federal government foresaw no conflict between its guarantee of a continuing fishing right for the Indians and its plans for future development of the territory. Indian fishing was viewed as a convenience to the growing population; after all, the white settlers were coming to farm--not to fish. So, recognizing the tremendous value and importance of fishing to the tribes, the United States' in the treaty secured their fishing rights and promised the tribes that the government would keep its word.

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of an impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed . . . the treaty was not a grant of rights to the Indians, but a grant of rights from them--a reservation of those not granted . . . And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees.

United States v. Winans, 198 U.S. 371, 380-381 (1905).

From the earliest contacts, Indian people of the Pacific Northwest traded and sold fish, principally salmon and steelhead, to non-Indians. With industrialization and settlement, demand for fish expanded rapidly. This expansion was greatly accelerated by major improvements in processing and preserving the catch near the end of the 19th century. Non-Indian entrepreneurs soon learned techniques of harvesting fish from the Indian tribes and developed their own business enterprises to capitalize upon the abundant salmon and steelhead resources of the territory. Non-Indian fish enterprises grew in profitability and a race began to catch the fish before they reached the tribal fisheries or another competitor's fishing ground. Logging and other industry also boomed along the rivers. By the turn of the century the decline of the salmon and steelhead resources had become evident due to the increased fishing pressure and deterioration of the environment.

A resource that had always been thought to be inexhaustible soon became the subject of a bitter struggle between the Indian tribes and the white society that surrounded them. Shortly after Washington entered the Union in 1889, it began exercising its police powers so as to discriminate against Indian fishing in favor of its other citizens.⁹⁷ The state's actions eventually were successful in impeding the exercise of Indian treaty rights by making it both difficult and dangerous.

Enforcement of State fishing laws and regulations against treaty Indians fishing at their usual and accustomed fishing places has been in part responsible for prevention of the full exercise of Indian treaty fishing rights, loss of income to the Indians, inhibition of cultural practices, confiscation and damage to fishing equipment, and arrest and criminal prosecution of Indians.

United States v. Washington, supra, 384 F. Supp. at 388. See also Washington v. Fishing Vessel Ass'n., supra, at 699, n. 14.

This preemption of Indians from their traditional fisheries was not contemplated by either party in the treaty bargaining, but rather developed as non-Indian settlers grabbed at the chance to use the seemingly unlimited resource to develop the economy of the new state.

The Indians understood that non-Indians would also have the right to fish at their off-reservation fishing sites. But this was not understood as a significant limitation on their right to take fish. Because of the great abundance of fish and the limited population of the area, it simply was not contemplated that either party would interfere with the other's fishing rights. The parties accordingly did not see the need and did not intend to regulate the taking of fish by either Indians or non-Indians, nor was future regulation foreseen.

Indeed, for several decades after the treaties were signed, Indians continued to harvest most of the fish taken from the waters of Washington, and they moved freely about the territory and later the State in search of that resource. The size of the fishery resource continued to obviate the need during the period to regulate the taking of fish by either Indians or non-Indians. Not until major economic developments in canning and processing occurred in the last few years of the 19th century did a significant non-Indian fishery develop. It was as a consequence of these developments, rather than of the treaty, that non-Indians began to dominate the fisheries and eventually to exclude most Indians from participating in it - a trend that was encouraged by the onset of often discriminatory state regulation in the early decades of the 20th century.

Washington v. Fishing Vessel Ass'n., 443 U.S. 558 at 668-669 (citations omitted).

With each new state fishing law regulating fishing and granting licenses to non-Indians, the Indian tribes found themselves increasingly preempted from their traditional, treaty-secured fisheries. The confusion and anger over the state's attempts to regulate Indians out of the fishery quickly lead to the stream of litigation over the nature and extent of the treaty fishing right.

In 1905, more than 80 years ago, the Supreme Court handed down United States v. Winans--its first landmark decision interpreting Northwest tribes' treaty fishing rights. Today, the Court has heard Washington State challenges to these same treaty provisions and the same fishing rights a total of seven times.^{10/} Each time, the Court has reaffirmed and directed the enforce-

ment of these rights. Each time, the Court has clearly and directly enunciated that the treaties secure the tribes' property rights in these fisheries, and that these treaty rights are separate and distinct from the rights others may have or claim in the fishery resources. As the Court was compelled to restate in its latest pronouncement:

In our view, the purpose and language of the treaties are unambiguous; they secure the Indians' right to take a share of each run of fish that passes through tribal fishing areas. But our prior decisions provide an even more persuasive reason why this interpretation is not open to question. For notwithstanding the bitterness that this litigation has engendered, the principal issue involved is virtually a "matter decided" by our previous holdings.

Washington v. Fishing Vessel Ass'n., 443 U.S. 658 at 679 (1979).

The Supreme Court then went on to review its prior decisions, including the three "Puyallup" cases which explicitly addressed the state's efforts to treat steelhead differently from salmon for purposes of treaty fishing rights. In those cases, as in all others, the Court "vindicated" the tribes' right to catch a share of each steelhead run as well as each salmon run. The Court unequivocally rejected the State Attorney General's argument that the tribes' rights were merely a right to an "equal opportunity" to participate, along with non-Indian citizens, in the hook and line fisheries permitted by the state.

Despite the clarity and force of each Supreme Court decision, the State of Washington refused to accept or respect the Court's rulings. Since achieving statehood, and at an ever escalating pace this century, the state of Washington has attempted by every means - law enforcement, preemptive regulation, state legislation, use of the state judiciary, and by attempts of state representatives in the United States Congress itself - to break the backs of the tribal fishing societies and "take away" the treaty reserved fishing right.

These state efforts began before the turn of the century with the authorization and licensing of non-Indian fisheries designed to illegally exclude and preempt traditional treaty Indian fisheries, and with other state attempts to license and regulate Indians out of the fishery. See, e.g., United States v. Winans, *supra*, and Tulee v. Washington, *supra*. Then, in the mid-1920's the state began to respond to growing sport fishing interests. Legislation was enacted to restrict access to steelhead by declaring it a "game fish", as distinguished from the other anadromous fish runs which were classified by the state as "food fish". This distinction was totally alien to the Indian tribes of the Pacific Northwest:

At the time of the treaties and for many years thereafter neither the Indians nor the non-Indians treated steelhead any differently from salmon in terms of the purpose and means of their harvest.

U.S. v. Washington, *supra* at 399.

For the tribes, steelhead had always been considered as another species of salmon. Since, by the consecutive timing of the runs, steelhead are the fish that are available for harvest primarily during winter months when other anadromous fish are not available, this fish has traditionally been relied upon as a crucial source of winter food and income.

Special interests in the state began advocating "decommercialization" of steelhead in the early decades of this century. With a burgeoning non-Indian population, a concerted effort was launched through the state legislature to advance the interests of sportsmen who wanted a greater share of the fish for their recreation. The first major step was taken in 1925 when the state legislature declared that steelhead were "game fish" when they reached the rivers. As a "game fish" it was prohibited to catch steelhead with nets. There was, however, an exception written into the law to permit Indians to net steelhead in streams within or adjacent to their reservations.¹¹ This exception was eliminated in 1927 and then, in 1929, the legislature advanced to prohibit the sale of steelhead in commercial markets. Finally, in 1933, the sport fishing interests lobbied to obtain public support for "Initiative 62" to establish a state Game Department. As part of the initiative, the taking of steelhead for any commercial purposes by state fishermen was prohibited.¹² So far as the state was concerned, this prohibition also applied to treaty Indians.

This state legislative history and subsequent state regulatory and enforcement actions laid the framework for Washington's recent round of legal ministrations, orchestrated by then State Attorney General Slade Gorton. This round began in the early 1960's with Game Department enforcement actions against treaty fishermen on the Puyallup and Nisqually rivers. The state had sought to restrict tribal fishermen to the "hook and line" fisheries permitted under state law and had prohibited the netting and commercial sales of steelhead with a poorly-disguised cry of "conservation necessity." However, a dead fish is a dead fish--whether caught by a hook and line or an Indian gillnet. Recognizing this, and that the Indian treaties are the "supreme Law of the Land," the Supreme Court struck down the state's prohibitions as they were applied to treaty Indians. When the Game Department would not concede to the Supreme Court's interpretation of the treaties, Attorney General Slade Gorton took the same case back up to the Supreme Court two more times.¹³ But each time the Supreme Court reaffirmed its earlier statements and, with increasing definition and impatience, the Court directed the enforcement of Indian treaty fishing rights.

When the Department of Game sought to impose a total ban on commercial net fishing for steelhead, the Court held in Puyallup II that such regulation was not a "reasonable and necessary conservation measure" and would deny the Indians their "fairly apportioned" share of the Puyallup River run. Although under the challenged regulation every individual fisherman would have had an equal opportunity to use a hook and line to land the steelhead, most of the fish would obviously have been caught by the 145,000 nontreaty licenses rather than by the handful of treaty fishermen. This Court vindicated the Indians' treaty right to "take fish" by invalidating the ban on Indian net fishing and remanding the case [for allocation of the run]. Even if Winans had not already done so, this

unanimous holding foreclosed the basic argument that the State is now advancing.

Washington v. Fishing Vessel Ass'n., supra, at 682-683 (emphasis added; citations omitted).

Despite these rebuffs by the Supreme Court, Slade Gorton continued to lead state efforts to overcome the treaties. The resistance of the State Attorney General's office, as well as the state agencies, to the 1974 decision of the U.S. District Court in United States v. Washington, received widespread notoriety. Gorton came to enjoy a national reputation as a modern-day Indian fighter.

With the Attorney General's Office leading the charge, the state launched an all out effort to paint a picture of devastation and disaster in the wake of decisions mandating the implementation of treaty fishing rights. The myth of Indian overfishing, for example, could not have been perpetuated without the cooperation of officialdom in state management agencies:

When tribal fishermen subjected themselves to arrest to protest the absolute prohibition, one Assistant State Attorney General advised another on tactics in the proceedings:

It appears to me that they are banking hopefully on public sympathy *** The only antidote I can think of at the moment to counter this strategy is to bleed heavily for the fish and pull out all the stops for the record in describing the rape of this God-given natural resource (sob) and maybe steal some of their thunder.

. . . on August 30, 1971, the Directors of both Game and Fisheries Departments joined in a meeting at the Governor's Office to discuss the dispute over Indian treaty fishing rights, particularly on the Puyallup River, with a group of non-Indian sportsfishermen. There, a strategy of regulated over-harvesting and diminishment of resources was outlined as being "in the interest of the overall and longer range overview." An attorney for the sportsfishermen pointedly asked, "Do we destroy the fish runs while we wait on the courts?" When State officials replied that damages to the runs "will really help our case in court," the attorney, Richard De Jean, resignedly commented, "I would rather we could better our position in some other way."

The state officials, which included a legislator who chaired a Natural Resource Committee in the State House, and a Governor's aide who later advanced by appointment and election to the State Supreme Court as an Associate Justice, explained to the sportsmen: "We agree with you - it's just a question of tactics. What's the best thing to do at this point." If the resources could be sufficiently reduced, and the blame cast upon the Indian tribes, they argued, "it would be effective and impressive with the public" and "help our

case in court." The meeting transcript denotes a sportsman's "chuckles," when stating and asking: "Some of the upstream creeks are still bone dry. You think it'll help us out if no fish get back to the hatchery? (chuckles)" The Fisheries Director then responded that it was not planned to "destroy it completely"; but once the Indian fisheries or treaty rights were eliminated, and the State had secured "the right to regulate it," the resources would be restored through enhancement activities "and we can bring it up from there."^{14/}

The state's campaign to overcome the treaty reservation and federal court rulings struck out beyond the tribes and the resources to strike at the lives of individuals who were properly doing their jobs. When responsible individuals have attempted to bring the true facts regarding Indian fishing to the public's attention, they have been subjected to enormous political pressure and their careers prematurely ended:

According to Congressman Joel Pritchard, [Congressman Don] Bonker spearheaded the 1975-1976 campaign with the U.S. Fish & Wildlife Service to break up its Northwest Fisheries Program biological staff and services to Indian tribes, and to secure the transfer or force the retirement of program manager, James Heckman, a 25-year career scientist. Under inter-agency contract to the Bureau of Indian Affairs and the Justice Department, that program had laboriously developed critical portions of the evidentiary case, and Heckman served as the United States' principal expert witness on fisheries, in the Boldt Case, United States v. Washington. To prevent implementation of the decision, State officials had joined citizen, commercial and sports fishery organizations in lobbying to end that USF&WS program and "to get rid of Heckman." A Bonker hometown cohort and Vancouver constituent, F. Larry Cassidy, member and chairman of the State Game Commission, was particularly effective in guiding Bonker in his lead role.

Interior Department records secured by the congressional American Indian Policy Review Commission documented a thoroughly nefarious, underhanded, ludicrous, and sometimes laughable, campaign to drum Heckman out of the Service, precisely because of his professional performance and duties, and because his exemplary career was perceived as a threat to the overriding political interests of public officials.^{15/}

Leading the State in its legal warfare during his twelve years in office, Attorney General Gorton was responsible for state actions and defenses in countless non-Indian fishing groups' challenges to treaty fishing rights, in the Puyallup cases and in United States v. Washington. These cases specifically concerned the right of Indians to take fish, including steelhead, for commercial purposes, when state laws prohibit that use for its citizens. Each time, Gorton advanced the theories that Indians should have no more than an "equal opportunity" to fish along with any other citizens of the state. He argued that net fishing for steelhead for commercial purposes threatened "conservation" of the steelhead resources. Each time, the Supreme Court emphatically struck down the state's position.

In the mid-1970s, after the "equal opportunity" arguments advanced by the State Attorney General were rejected by the federal courts in the Puyallup cases and in United States v. Washington, an incredible series of specious court challenges was organized through the efforts of the Attorney General's office, the Washington State courts, and by non-Indian fishermen who engaged in illegal fishing and vocal (and sometimes violent) protests. The United States Court of Appeals for the Ninth Circuit, in reviewing the District Court's decision in United States v. Washington, took special notice of the state's unwillingness to respect and abide by the decisions of the federal courts:

The record in this case, and the history set forth in the Puyallup and Antoine cases, among others, make it crystal clear that it has been the recalcitrance of Washington State officials (and their vocal non-Indian commercial and sports fishing allies) which produced the denial of Indian rights requiring intervention by the District Court. This responsibility should neither escape notice nor be forgotten.

United States v. Washington, 520 F.2d 676 (9th Cir. 1975).

So chaotic had the fishery become because of the state's refusal to enforce the orders of the District Court, that the Court was forced to take over management of the fishery. The Ninth Circuit Court of Appeals noted, in approving the District Court's actions:

Agencies of the State of Washington and various of its constituencies continue to attack the judgment in United States v. Washington. Accordingly, we will again set forth the treaty basis of that decision and reaffirm its validity. The State's extraordinary machinations in resisting the decree have forced the District Court to take over a large share of the management of the State's fishery in order to enforce its decrees. Except for some desegregation cases, the District Court has faced the most concerted official and private efforts to frustrate a decree of a federal court witnessed in this century.

Washington v. Fishing Vessel Ass'n, *supra*, at 636 n.35, citing United States v. Washington, 573 F.2d 1173, 1175 (9th Circuit 1978) (citations omitted).

The conflicts and controversy that ensued from Slade Gorton's insistence that he could change the federal courts' pronouncements on the law and negate the effect of the treaties finally forced the Supreme Court to review United States v. Washington, together with the conflicting Washington State court decisions. In reviewing the state's position on steelhead, specifically, the Court stated:

In the more recent litigation over this treaty language between the Puyallup Tribe and the Washington Department of Game, the Court in the context of a dispute over rights to the run of steelhead trout on the Puyallup River reaffirmed both of the holdings that may be drawn from Winaans--the treaty guarantees the Indians more than

simply the "equal opportunity" along with all citizens of the State to catch fish, and it in fact assures them some portion of each relevant run. But the three Puyallup cases are even more explicit; they clearly establish the principle that neither party to the treaties may rely on the State's regulatory powers or on property law concepts to defeat the other's right to a "fairly apportioned" share of each covered run of harvestable anadromous fish.

Washington v. Fishing Vessel Ass'n, *supra*, at 681-682.

More directly, the federal courts have explicitly and repeatedly ruled that the tribes' treaty fishing rights include the right to fish for steelhead—in their traditional manner, in their customary fishing locations, and for commercial as well as for ceremonial, subsistence or recreational purposes.

The state laws and regulations pertaining to game fish which reserve the entire harvestable portion of a species of fish for a special interest and purpose discriminate illegally against the treaty Indians.

United States v. Washington, *supra*, 384 F.Supp. at 403-404.

The taking of anadromous fish from usual and accustomed places, the right to which was secured to the Treaty Tribes in the Stevens' treaties, constituted both the means of economic livelihood and the foundation of native culture. Reservation of the right to gather food in this fashion protected the Indians' right to maintain essential elements of their way of life, as a complement to the life defined by the permanent homes, allotted farm lands, compulsory education, technical assistance and pecuniary rewards offered in the treaties. Settlement of the West and the rise of industrial America have significantly circumscribed the opportunities of members of the Treaty Tribes to fish for subsistence and commerce and to maintain tribal traditions. But the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their honor to uphold.

Id., at 406-407.

When the Supreme Court reviewed the treaty language once again upon provocation by the conflict created by the state, in unusually strong language the Court upheld the need for intervention by the District Court in light of the state's extraordinary refusal to comply with the law.

State-law prohibition against compliance with the District Court's decree cannot survive the command of the Supremacy Clause of the United States Constitution. It is also clear that Game and Fisheries, as parties to this litigation, may be ordered to prepare a set of rules that will implement the Court's interpretation of the rights of the parties even if state law withholds from them the power to do so.

* * *

But the District Court may prescind that problem by assuming direct supervision of the fisheries if state recalcitrance or state law barriers should be continued. It is therefore absurd to argue, as do the fishing associations, both that the state agencies may not be ordered to implement the decree and also that the District Court may not itself issue detailed remedial orders as a substitute for state supervision. The federal court unquestionably has the power to enter the various orders that state official and private parties have chosen to ignore, and even to displace local enforcement of those orders if necessary to remedy the violations of federal law found by the court.

Washington v. Fishing Vessel Ass'n., supra, at 695-696.

In making this ruling, the Court quoted Attorney General Gorton's representation that:

"The State of Washington and its Department of Fisheries cannot emphasize too strongly that they do not propose to inhibit the enforcement of proper federal court orders"

Whatever the decision of this Court, the state will implement it"

Washington v. Fishing Vessel Ass'n, supra, n. 35, at 694 (emphasis supplied).

In its decision the Court noted, however, that the State Attorney General had omitted the same affirmation on behalf of the Washington State Department of Game. The Court "assumed" that all of the state, including the Department of Game, would nevertheless comply with its decision. Id., n. 35 at 694.

Evidently, the assumptions of the Supreme Court were not well founded. Having failed to prevail with his arguments through the orderly processes of the judicial system, the former Attorney General has now brought the same arguments to the Congress in the form of S. 874.

The conflict between the Washington Department of Game and Indian tribes centers on the steelhead. Contrary to the assertions of Mr. Gorton and Mr. Bonker, this conflict did not begin with the decision in United States v. Washington. In the past as well as today, irresponsible sportsmen and their political mentors have brought their propaganda to both the state legislature and the United States Congress. Throughout the years each attack on Indian fishing has been accompanied by the same tactics: the proliferation of rumors and falsehoods claiming that the resource was being eradicated by uncontrolled

Indian fishing. A memorandum written by a federal official in 1940 describes circumstances which are all too familiar today:

By reason of the controversy that has extended over the past five years over fishing rights claimed by the Indians on the one hand and the State Game Officers and Sportsmen Clubs on the other hand, a lot of animosity has arisen against the Indians, especially recently, because of the attempts through legal means to establish their claimed Treaty Fishing Rights. Some of the so-called Sportsmen Clubs and their spokesmen and others, claiming to represent such clubs, have been indulging in false and misleading propaganda against the Indians, the Indian Department and officers of this Agency with the evident purpose of creating discredit and bias and to attempt to place restraint against the Indians and the Indian officers in order to prevent them from successfully prosecuting to a judicial determination the lawful rights claimed by the Indians under the Treaties and the Laws of the State. Some of these spokesmen and representatives have gone to the extent of misrepresenting the conditions and the true facts and circumstances to the United States Attorney General, members of Congress and other Departmental Officers. It now seems clearly evident they aim to forestall, through political means and other means of intimidations, that which they feel may be achieved by the Indians through the orderly processes of the courts.

It is of course, an important and necessary part of the work and duty of the Indian office to protect Indian wards of the government against all forms of exploitation. Often those whose actions have merited criticism become resentful and sometimes bitter when we interfere with and expose their activities. In these cases the resentment took the form of misleading articles in newspapers, communications to various members of Congress and to Washington Department officials, in which the true facts were grossly misrepresented and calculated to prejudice the Indians as well as officials of the Department in the minds of the general public.^{16/}

The countless misrepresentations made by various sportsmen and others against Indian fishing continue to be proliferated by media reporters who seem all too willing to accept these unsubstantiated allegations at face value or who are unwilling to find out for themselves the facts of the matter. The tactics of the sportsmen and their official mentors have worked well. They managed to prevent Indians from implementing their rights, despite the courts, for more than half a century. And still today they seek to overturn those rights to benefit the powerful special interests of private individuals who fish for sport in this state.

A 1981 report by the United States Commission on Civil Rights summarized the fishing rights controversy in the Northwest by these statements:

1. Indian Tribes have been in conflict with the State over fishing rights through this century...

3. Throughout this century, the State of Washington has utilized its governmental authority in such a manner as to deprive Indians of their fishing rights.
4. Indian tribes have been blamed erroneously for the crisis concerning the scarcity of fish.
5. The fishing rights conflict, which is a dispute over property rights, has racial dimensions.^{17/}

Perhaps the saddest commentary of all is the shadow on the Nation's honor by a state which, despite its mandate under the Statehood Enabling Act (requiring compliance with Indian treaty commitments), the constructive policies and commitments ratified by the Congress, and the clear and unequivocal judgments of the Supreme Court over the past century, continues to act in contempt of the commitments that form the foundation of the United States' relationship with Northwest tribes by pursuing the abrogation of fishing rights, secured by treaty, that are the cultural and economic cornerstone of the Northwest tribal fishing societies.

Who runs the Washington Department of Game?

The Washington Department of Game is directed by a commission¹⁸ consisting of six individuals who are appointed by the Governor. These individuals serve staggered terms of office and have been chosen primarily from the ranks of various sportsmen organizations. The Game Commission hires the Director of the Department and the Director is answerable to the Commission.

The Washington Department of Game is structured to serve a single group - sportsmen...It is not surprising...that the Game Department was to become the most aggressive opponent of Indian fishing rights, even to the point of taking different legal positions from its counterpart, the Fisheries Department.¹⁹

Throughout the history of the controversy over Indian fishing for steelhead, even to the most recent Supreme Court decision, the Game Department has been unwilling to accept and abide by the decisions of the courts.²⁰ Historically, there has been an extremely close relationship between officials of the Game Department and sportsmen organizations.²¹

Two favorite tactics have been employed by the Department and its sports-fishing constituents: (1) the proliferation of propaganda depicting Indian fishing as a menace to the resource; and, (2) the use of violence to intimidate Indian fishermen. The first tactic was used to sway public opinion in the state to establish a Game Department and was employed again during the early 1960's to force a Congressional hearing on legislation which would abolish Indian treaty fishing rights.²² The second tactic has been continuously used to create chaos in support of their claims. Both tactics are founded in currents of racism within the State of Washington.

Throughout the history of the conflict over steelhead, sportsmen and Game Department officials have frequently employed violence as a means of intimidating Indians to prevent them from exercising their fishing rights.

During the fishing seasons, the Indians dare not leave the river because the sportsmen smash our boats and rip our nets, steal our motors, in order to get revenge on the Indians.²³

An isolated incident? Hardly.

On December 13, 1955, the State launched a battle when Indians attempted to lower one symbolic canoe into the water. State

wardens descended on Frank's Landing in full scale "anti-riot" operation which threatened the lives of many Indians. Thirty-five to forty State Game and Fisheries men carrying night sticks, long, seven-cell flashlights (unnecessary in the daylight) and at least one blackjack, attacked eight unarmed Indian men and nineteen women and children using what one Republican State Senator, Hal Wolfe, called "Gestapo police-state tactics."²⁴

On September 9, 1970, over 200 state and local police stormed an Indian fishing camp on the Puyallup River and teargassed the people, arrested dozens of Indians and their supporters, and bulldozed the camp away, causing \$10,000 worth of damage. After the police raid on the camp, white vigilantes calling themselves "sportsmen" began raiding one Indian camp after another. They sank Indian fishing boats, stole and destroyed Indian nets, took pot-shots at Indians, and harassed and threatened Indian families on their own land. The Puyallup people contend there is a conspiracy between the state Game officials, who incite white vigilantes to acts of violence, and the Tacoma police, who refuse to protect the Indians.²⁵

Incidents from the remote past? Hardly.

These tactics are still employed by various individuals who call themselves sportsmen. On December 23, 1980, at a press conference concerning passage of the Salmon and Steelhead Conservation and Enhancement Act of 1980 (P.L. 96-561), Cliff Durbin, a leading spokesman for the Northwest Steelhead and Salmon Council, urged sportsmen to continue destroying Indian nets and harassing Indian fishermen in any way possible.²⁶

The controversy over Indian steelhead fishing is still colored by unmistakably racial overtones. At the June 29, 1981, hearing on S.874 it was not unusual to hear sportsmen making vociferous racial slurs as they cheered Senator Gorton's political posturing and raised their hopes that Congress will act to change federal law.

The U.S. Commission on Civil Rights described the motivation behind the lawlessness of the state's non-Indian commercial and sports fishermen as follows:

Their tactic has become increasingly clear: create as much discord, lawlessness, and chaos as possible..., attribute the problem to Indian treaty fishing rights, and then apply political pressure to induce Congress to resolve the matter

at the expense of the group with the least political impact, the Indian Tribes.²⁷

Many of the sportsmen who are now actively seeking to lobby Congress in support of their desire to decommercialize steelhead were and still are engaged in harassing Indian fishermen. For the most part, however, the definitive ruling of the U.S. Supreme Court has substantially diminished the violence experienced on the rivers in recent years.

Some sportsmen attempt to inflame the controversy over Indian steelhead fishing once again, vigilante tactics and racism must be expected to surface.

The state is very adept at playing the interests of one group of people against another group of people, to the detriment of most of the people and the benefit of very few. If this can be done along racial lines, of course, the state's job becomes easier and the effect of the strategy intensified.²⁸

Despite the denials of sportsmen and their political spokesmen, the Steelhead decommercialization issue carries racial overtones. At the root of the dispute lies the fundamentally racist notion that Indian use of their share of the resource is somehow "inferior" to that of non-Indian sportsmen. This notion that Indians are somehow less worthy of harvesting steelhead than non-Indians has sometimes been expressed in rather explicit terms.

For example, during the early 1960's, the Game Department produced a movie depicting the Indian as a sub-human predator that would destroy the steelhead resource unless brought under the control of the State. The attitude of the Game Department eventually found its way into the courts as reflected in the Washington State Supreme Court's chastisement of the Game Department's attorneys for arguing what has been called the "menagerie theory" of Indian rights:

That Indians are less than human and that their relation to their lands is not the human relation of ownership, but rather something similar to the relation that animals bear to the areas in which they may be temporarily confined.²⁹

Various publications authored by so-called "sportsmen" have been even more racist in character. The ex-chief enforcement officer for the Department of Game, Neubrech, co-authored a publication in which he placed part of the blame for non-recognition of Indian rights on "in-breeding" and occasionally "incest" among Indians as a reason why some Indians have treaty fishing rights while others do not.³⁰ When substantive information

has been unavailable to support the interests of certain sportsmen, they have frequently resorted to arguments based on race.

Why do Indians have Different Rights than Other Citizens of the State?

The answer to this question lies in the fundamental nature of the treaty fishing right. Indian treaties are part of the supreme law of the land and hence may not be "qualified" (i.e. limited or in some way modified) by state laws or regulations.³¹ While the state may regulate fishing by non-Indians to meet a wide variety of purposes, it may not determine for Indians how their resources may be used.

...fishing by other citizens and residents of the state is not a right, but merely a privilege which may be granted, limited, or withdrawn by the state as the interests of the state and the exercise of treaty fishing rights may require.³²

The fishing right is an enforceable property right that is owned by Indian tribes by virtue of their treaties with the United States and protected by federal law. It is not only a civil right which is protected by due process and equal protection provisions of the Constitution.

The state may regulate fishing by non-Indians to achieve a wide variety of management or "conservation" objectives. Its selection of regulations to achieve these objectives is limited only by its own Fourteenth Amendment. But, when it is regulating the federal right of Indians to take fish at their usual and accustomed places, it does not have the same latitude in prescribing the management objectives and the regulatory means of achieving them. The state may not qualify the federal right by subordinating it to some other state objective or policy. It may use its police power only to the extent necessary to prevent the exercise of that right in a manner that will imperil the continued existence of the fish resource. The measure of the legal propriety of a regulation concerning the time and manner of exercising this "federal right" is, therefore, "distinct from the federal constitutional standard concerning the scope of the police power of the state."³³

The separate and distinct nature of the treaty fishing right is, of course, the basis for the many federal court decisions which have declared state laws and regulations illegal when applied to Indians. The source of protracted litigation and controversy regarding steelhead is the result of a refusal of the Department of Game and various sportsmen constituencies to

respect the determination of the Courts.

When proponents of steelhead deccommercialization address the topic of Indian treaty rights they commonly phrase their arguments in such terms as "supercitizen" or equity such as "why should less than 1% of the population be entitled to harvest 50% of the fish?" These arguments are nothing more than rephrasing of the "equal opportunity" reasoning that has been rejected by the Supreme Court seven times since the early 1900's. "A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations."³⁴ Through the treaties, Indian tribes relinquished their claims to millions of acres of land in partial exchange for the promise that the United States would protect their rights to take fish at their usual and accustomed places.

The fact that Indians possess certain property rights that are not held by non-Indians or members of Indian tribes which do not have treaty fishing rights does not make them "supercitizens" any more than ownership of a home may make anyone a "supercitizen." Are the members of the Boeing or Weyerhaeuser family accused of supercitizenship because of the property interests they have inherited? No; the courts have seen through the smokescreen arguments of the state.

Whatever opportunities the treaty assures Indians with respect to fish are admittedly not "equal" to, but are to some extent greater than, those afforded other citizens. It is therefore simply erroneous to suggest that the treaty language "confers upon non-Indians precisely the same right to fish as it confers upon Indians."³⁵

In affirming the allocation of fish to treaty Indians, the Supreme Court stated that:

It is absolutely clear, as Governor Stevens himself said, that neither he nor the Indians intended that the latter "should be excluded from their ancient fisheries,"...and it is accordingly inconceivable that either party agreed to authorize future settlers to crowd Indians out of any meaningful use of their accustomed places to fish. That each individual Indian would share an "equal opportunity" with thousands of newly arrived individual settlers is totally foreign to the spirit of the negotiations. Such a "right", along with the \$207,500 paid the Indians, would hardly have been sufficient to compensate them for the millions of acres they ceded to the territory.³⁶

...the treaty guarantees the Indians more than simply the "equal opportunity" along with all of the citizens of the state to catch fish, and it in fact assures them some portion of each relevant run. But, the three Puyallup cases are even more explicit; they clearly establish the principle that neither party to the treaties may rely on the State's regulatory powers or on property law concepts to defeat the other's right to a "fairly apportioned" share of each covered run of harvestable anadromous fish.³⁷

Thus the court has determined that treaty Indians and non-Indian citizens of the state are each entitled to take their share of each run of steelhead that returns to the usual and accustomed fishing places of a treaty tribe. Each party may determine for itself how to use its share of a common fishery resource without infringing upon the rights of the other.

MYTH: INDIAN FISHING FOR STEELHEAD MUST BE ELIMINATED FOR CONSERVATION
OF THE RESOURCE.

Spokesmen for various sportsmen's organizations, including the Department of Game and certain political figures, frequently raise this contention in order to confuse environmental concerns and questions concerning abrogation of Indian treaty fishing rights. The claim is most commonly accompanied by misrepresentation of data, but is based principally upon a semantic play on the word "conservation."

The Game Commission defines "conservation" as "wise or prudent use."³⁸ But the Courts have determined that the State has subordinated the treaty fishing right to its own definition of "conservation" in violation of federal law. The word "conservation," therefore, has a very specific and limited meaning when used by the Courts.

However broadly the word may be used and applied in the theory and practice of fisheries science and management, "conservation" as used in the Supreme Court decisions and herein is limited to those measures which are reasonable and necessary to the perpetuation of a particular run or species of fish. In this context, as well as by dictionary definition, "reasonable" means that a specifically identified conservation is appropriate to its purpose; and "necessary" means that such purpose in addition to being reasonable must be essential to conservation.³⁹

The state's police power to regulate the off-reservation fishing activities of members of the treaty tribes exists only to the extent necessary to protect the fisheries resource. This power does not include the authority to impair or qualify the treaty right by limiting its exercise to State-preferred times, manners or purposes except as such limitation may be necessary for preservation of the resource and protection of the interests of all those entitled to share it. This power does not include the power to determine for the Indian tribes what is the wisest and best use of their share of the common resource.⁴⁰ (emphasis added)

With respect to steelhead, the courts have determined that state laws and regulations which reserve the entire harvestable portion of the resource for sports interests are unlawful because they discriminate illegally against fishing by treaty Indians.⁴¹

When managing a fisheries resource for conservation purposes, the superior nature of the treaty fishing right over the fishing privileges of other citizens must be recognized. Providing treaty fisheries with their allocation of fish must be an objective of the state's regulatory policy at least co-equal with the conservation of fish for other users.⁴² Further, the treaty fishing right cannot lawfully be restricted unless non-Indian commercial and sports fishing interests are restricted to the full extent necessary for the conservation of fish.⁴³

Under the stringent management standards now prescribed by the courts, both the resource and the fishing rights of Indians and non-Indians are fully protected. The procedural process employed in the regulation of steelhead fishing involved a determination of the number of fish that can be harvested from each run without damaging the resource. If a steelhead run is so depressed that it can sustain no harvest at all, then neither Indian nor sports fishing can be permitted on that run. Where harvests of steelhead are available, the opportunity to take a portion of the catch must be shared between treaty and non-treaty interests according to the allocation requirements defined by the courts.

Under current law, the state has the authority to restrict Indian fishing in case there is a true resource conservation need. Providing the state with additional regulatory power over Indian fishing through measures described in S.874 is not intended to protect the resource against overharvest, but rather to allocate more fish to sports fishing interests.

There is no true resource conservation problem caused by Indian fishing for steelhead. It would be absurd for Indians to willfully damage a resource that is so integral to their cultures and economies and in which they have a direct and enforceable property interest.

Is Indian Net Fishing for Steelhead Destroying the Resource?

Steelhead are indigenous to the rivers of the Pacific Northwest. They were not brought over on the Mayflower or by the various northwest steel-header clubs. They were managed by the Indian tribes for thousands of years before they were "discovered" by sportsmen. Prior to the negotiation of the treaties, Indian tribes practiced harvest and management methods that assured the perpetuation productivity of the fisheries resources upon which they depended.

Minimal disturbance of the natural environment and fishing patterns keyed to the biology of the resource were the key ingredients in the Indian management philosophy. These ingredients were inseparably encased within a

ritualistic conception of life which taught that all living things were interdependent. To the Indian people, fish were not regarded as simply resources to be exploited; rather they were considered to be beings which possessed conscious spirits that compelled them, voluntarily and compassionately, to give their bodies to men during times of need. Each season, with the taking of the first salmon or steelhead, religious ceremonies were performed to express thanks and to celebrate the renewal of life, both for the spirit of the fish and for the people who were fortunate enough to have been given the use of the fish's flesh. Religious rites, beliefs, and attitudes ensured that fish were never wantonly wasted and that pollution of streams would not be permitted.⁴⁴

Steelhead played an important part in the trade and diet of the Northwest Indian tribes, especially during winter months when no other source of fresh fish was readily available. Fishing methods included the use of many different types of nets, including river gill nets, the most commonly employed harvesting gear for steelhead employed by Indian fishermen today.⁴⁵

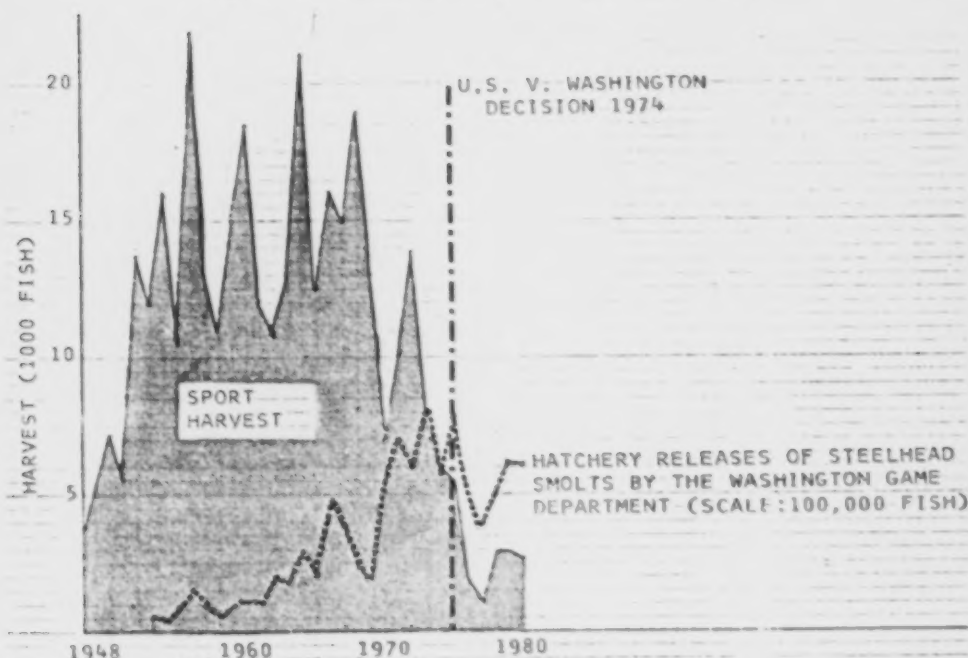
Indian fishing by gill nets has not and does not endanger the resource. The steelhead resource has been preserved even where commercial net fisheries have been completely unregulated by the State.⁴⁶ There are, further, no studies which have conclusively proved that Indian net fisheries totally unregulated by the state have caused a decrease in any steelhead run.⁴⁷ The fisheries management standards decreed by the federal court in U. S. v. Washington have established a well defined system to virtually eliminate any potential possibility of overfishing by Indian tribes.

The Skagit River: Don't Blame the Indian Fishery

The Skagit River has frequently been cited by various spokesmen for sportsmen's organizations as an example that "proves the truth" of their allegations that Indian fishing is destroying the resource. Citing the prominent place that the Skagit used to hold as the State's greatest producer of sport caught steelhead with the exception of the Columbia River, anglers have blamed their declining success in recent years on the resumption of treaty Indian fishing for steelhead pursuant to the 1974 decision of the federal court in U.S. v. Washington.

While the ten year average winter run steelhead sport catch taken from the Skagit during 1961-71 was 14,720 fish compared to a six year average of 3,156 after 1974 (Figure 1), the decline in sport harvest cannot reasonably be attributed to Indian fisheries and in fact may not even be an accurate reflection of the status of the resource. A report published by the

Figure 1.: SKAGIT RIVER STEELHEAD CATCH HISTORY*



* Source:

Catch Data: 1948-77 Meyers, J., 1977. Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problems Concerning Steelhead, U.S. Fish and Wildlife Service, Fisheries Assistance Office, Olympia.
 1978-80 Washington Department of Game Summaries of Steelhead Sport Catches in Washington.

Hatchery Release Data:

1952-76 Waknitz, W., C. Mahrken, and J. Meyers, 1977. Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problems Concerning Salmon and Steelhead Production from the Boldt Case Area from 1952-76.
 1977-78 Washington Department of Game Pre-Season Run Projection.

Washington Department of Game noted:

The Skagit River has historically provided an excellent sport fishery for winter run steelhead. A decline in sport catch has been observed in recent years, and while there has clearly been a reallocation of the harvest between Indian and non-Indian fishermen, it is not clear whether the stock size has declined.⁴⁸

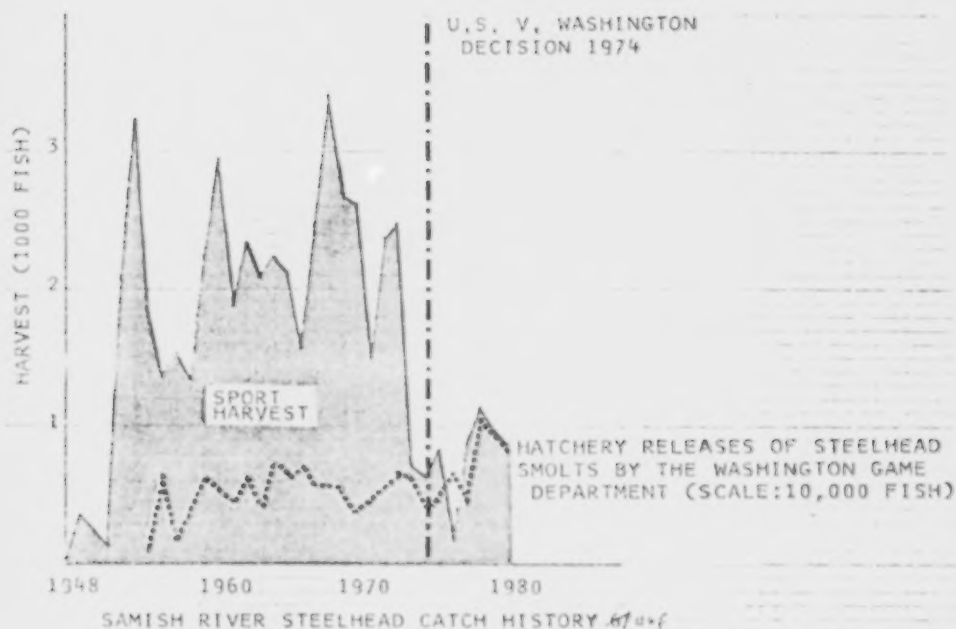
When recent sport catches are examined within their proper historical context, it is exceedingly clear that treaty Indian fishing since 1974 has not been solely responsible for the dramatic decline in sport fishing success on the Skagit River. Following 1948 when the State's sport catch reporting system was initiated, the catch increased steadily until it reached a relatively stable level during the period from the mid 1950's to 1968. This was a period of time during which intensive sport fishing effort occurred on the Skagit River with increasing use of guides and boats. It was also a period of time when Indian fishing was minimal because they were prevented from exercising their fishing rights by discriminatory regulations promulgated by the State of Washington and physical harassment by sportsmen. After 1968, the sport catch dropped precipitously until it reached a low of approximately 1200 fish during the 1976-77 season. The declining trend of sport catches in the Skagit River was obviously well in evidence before the resumption of treaty Indian fishing for steelhead in 1974.⁴⁹

The catch pattern of the Skagit River sport steelhead fishery has a shape classically characteristic of a fishery that is allowed to develop in the absence of adequate regulatory controls. As fishing pressure and catch increased, the resource was subjected to an extended period of intensive exploitation. The wild stocks of steelhead so highly prized by the sportsmen could evidently not sustain their productivities for twelve successive years of exploitation by the sport fishery (3 full cycles of the resource were subjected to the fishing pressure).

The dashed line in Figure 2 depicts the release of hatchery produced steelhead into the Skagit system corresponding to the principal year of harvest. A history of progressively increasing hatchery plants into the river may have masked or contributed to the apparent decline of wild steelhead stocks. Strangely enough, increased hatchery plants beginning in the late 1960's seem to coincide with decreasing trends in sport harvests.

To further emphasize the absence of any substantive relationship between Indian fishing and declining sport catch on the Skagit river, consider the Samish river, the largest independent water shed within the Skagit basin

Figure 2. SAMISH RIVER STEELHEAD CATCH HISTORY*



other than the Skagit river itself. Sport catches in the Samish have a remarkably similar fishing pattern to that evident on the Skagit River. Comparing the catches in the two rivers, the Washington Department of Game noted:

The decline in steelhead harvest was more apparent in the Samish River. When comparing the 10 year average catch from 1961-71 of 2355 fish with the three year average from 1971-74 of 1286 fish and the three year average catch from 1974-77 of 642 fish. The Samish is heavily utilized by anglers but has little tribal harvest with the three year average tribal catch for 1974-77 being 30 fish.⁵⁰

For the past four seasons, it appears that the steelhead sport fishery in the Samish and Skagit Rivers is being supported primarily by hatchery releases.⁵¹

In the instances of both the Skagit and Samish Rivers, the sport catch patterns exhibit characteristics that are typically associated with developing fisheries with regulatory controls that are inadequate to protect the resource. Prior to the decision of the federal court in *U.S. v. Washington*, there was no limit on the number of steelhead that could be harvested annually by sportsmen from these rivers. The apparent result is that fishing pressure and catch increased to the point where the harvest level could not be sustained by the resource.

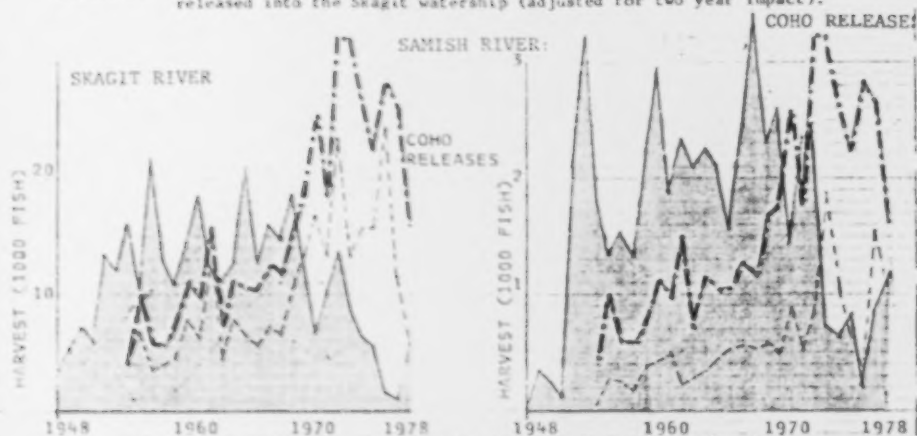
There may, however, be other factors besides sport fishing which could have contributed to the apparent decline of steelhead (as inferred by trends in sport catch records) in the Skagit Basin. Some of the decline can no doubt be attributed to general deterioration of freshwater habitat, particularly the small tributaries utilized by steelhead, but salmon populations have not demonstrated comparable declines.

Another rather intriguing possibility concerns potential interspecific competition between steelhead and coho salmon. In addition to having similar patterns of sport fishing for steelhead, both the Skagit and Samish Rivers have hatchery facilities that produce large numbers of coho salmon. Sport steelhead catches in both rivers have extremely strong negative relationships to the number of coho salmon released into the Skagit basin waters two years earlier suggesting that the presence of large numbers of young coho may somehow affect the survival of steelhead. Such an interspecific relationship is consistent with the conclusions reached by a researcher investigating the reasons why wild steelhead stocks were not maintaining themselves in rivers receiving large plants of hatchery fish. "Wild winter and probably the summer steelhead have declined with the development of the hatchery program involving all stream rearing salmonids including steelhead."⁵²(Figure 3)

Declining sport catches of steelhead in the Skagit and Samish Rivers clearly have their origins in causes other than fishing by treaty Indians. In fact, since the resumption of Indian fishing for steelhead on the Skagit River in 1974, wild steelhead stocks have begun to recover as a direct result of increased regulation of both sport and treaty Indian fisheries. No longer is the harvest permitted to grow unchecked. Each season, the number of fish that can be safely harvested without damaging the resource is determined and fisheries are controlled so that this number is respected.

In addition, because of the actions of the court to protect and enforce the treaty fishing right, the management of all steelhead resources has had to be placed on a firm biological foundation. For the Skagit River system,

Figure 3.: Relationship between steelhead sport catch and coho hatchery released into the Skagit watershed (adjusted for two year impact).



this need has been recognized and extensive research into the steelhead resources and habitat has been initiated through cooperative studies funded through the U.S. Fish and Wildlife Service (Contract #12-16-G01-1345 IFC).

A spirit of cooperation is beginning to emerge. Recently federal and state agencies, Indian tribes and Seattle City Light agreed to a plan designed to improve the survival of Skagit River salmon and steelhead resources through modification of streamflows controlled by hydro-power projects.⁵³ Because of the treaty fishing right, prospects for Skagit River steelhead have been enhanced tremendously.

Elsewhere, Indian fisheries have been blamed for apparent declines in wild steelhead populations when enhancement practices of the Washington Department of Game or Fisheries may very well be principally responsible. While investigating the reasons for an apparent decline in wild steelhead in rivers throughout Western Washington where hatchery reared steelhead and salmon have been released, researchers turned their attention to three rivers on the Washington coast, the Quinault, the Queets, and Chenailis. These rivers had not been planted with hatchery fish and had sustained Indian fisheries for centuries, the last several decades without State regulation. Wild steelhead populations in these three rivers did not show any evidence of the decline characteristic of hatchery-planted streams elsewhere in Western Washington (in fact, Indian catches showed significant increases and the population was stable). These facts led the investigators to conclude that "the wild steelhead populations have declined in recent years due in part to interspecific competition brought about by planting of limited numbers of small sized juveniles which residualized and became competitive. Interspecific competition created by hatchery programs operating on sea-run cutthroat trout, coho, and chinook salmon collectively may have been a major influence contributing to the decline."⁵⁴

The Myth of Indian Over-fishing Continues

After investigating numerous allegations and charges made against Indian fishing by various officials of the Washington Departments of Fisheries and Game and spokesmen for several sportsmen's clubs, the court concluded that Indian fishing had been wrongfully blamed for the apparent decline of the fisheries resources of the State.

For several decades following negotiation and ratification of the treaties all of the tribes extensively exercised their treaty fishing rights by fishing as freely in time, place, and manner as they had at treaty time, totally without regulation or any restraint whatever, excepting only by the tribes themselves in strictly enforcing tribal customs and practices which, during that period and for innumerable prior generations, had so successfully assured perpetuation of all fish species in copious volume. The first other than naturally caused threat to volume or species came from non-Indian population growth and non-Indian industrial development in the rapid westward advance of civilization.⁵⁵

The court further determined that:

Gill net fishing of the type and operation utilized by Plaintiff Tribes is not an inherently destructive means of harvesting salmonids (including steelhead), and it may be regulated and controlled sufficiently to prevent over-harvesting. The amount of fish taken by nets may be regulated by the regulation of net length, the type of net, mesh size, the place of fishing and periods for taking. Net fisheries and hook-and-line fisheries can be regulated, from total prohibition to total permission, with all degrees of restrictions inbetween.⁵⁶ (emphasis added)

At least since the decision of the Supreme Court in *Puyallup II*, the State power to regulate Indian fishing for true conservation purposes had been traditionally recognized.⁵⁷ When the most recent treaty fishing rights decision was brought to the trial court in *U.S. v. Washington*, rumor and allegations charging that Indian fishing was destroying the resource were rampant. However, these assertions were totally unsubstantiated; the State was unable to prove a single instance in which an unregulated Indian fishery had caused a decrease in any run of fish.

Notwithstanding three years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a

definitely identified member of any plaintiff tribe exercised his off-reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.

Unfortunately, insinuations, hearsay and rumors to the contrary, usually but not always instigated anonymously, have been and still are rampant in Western Washington. Indeed the near total absence of substantial evidence to support these apparent falsehoods was a considerable surprise to this court.⁵⁸

Despite the court's factual findings that the charges of Indian over-fishing made by various sportsmen and Game Department officials were totally unsupported by any credible evidence, these groups have persisted in spreading their propaganda through readily available forums such as fishing magazines, newspaper articles, or radio and television broadcasts. Unfortunately, since few of these media vehicles ever bother to verify or authenticate the claims, misinformation is allowed to proliferate unchecked.

The allegations and assertions which are employed today are reminiscent of those used throughout the conflict over the exercise of Indian treaty fishing rights. In the 1930's, Indian fishing and fish trap operators were made the political scapegoats for over-fishing caused by troller, purse seiners, and sportsmen. During the early 1960's and the 1964 hearings on Indian Fishing Rights before the U.S. Senate, the Department of Fisheries repeatedly stated that Indian fisheries take a disproportionately high portion of spawning runs, despite the fact that all salmon taken anywhere, at any stage of maturity are potential spawners and that Indians had been harvesting less than 5% of the total catch.⁵⁹ In the years immediately preceding the Puyallup II litigation, sportsmen and Game Department officials complained that Indian net fishing for steelhead was destroying the resource even though available evidence indicated that sportsmen had taken 89% of the total harvest after the steelhead had already passed through the Indian net fishery.⁶⁰ Yet the myth of Indian over-fishing continues.

The sources of information used by various sportsmen claiming that indian fishing is endangering the resource nearly remain anonymous, a pattern familiar to anyone acquainted with the fishing rights controversy in the Northwest. As an example, the following quote:

Spot (sic) catches of steelhead have declined since the Boldt decision by 50%, according to conservative estimates by fisheries officials in western states. Other figures suggest sports harvest of the noble game fish have dropped by as much as 75%.⁶¹

On the Sol Duc River on the Olympic Peninsula, for example, we attribute the loss of a large part of the native run of large steelhead into that system to one net belonging to one individual. That individual has set up his net at a particular location at the mouth of the river in such a way that he has the capability of taking 100% of the run if he so chooses. At this point he has chosen to harvest 90%.⁶²

Several points well illustrate the misleading character of the articles. First, all sources of information remain anonymous such as "fisheries officials" from unknown "western states" and "other figures;" secondly, charges are made against an unnamed individual with percentage figures that are totally unsupported; third, if sport fisheries were strictly regulated, and they are not, a 50% decline in the sport catch taken from certain rivers should be expected because of the allocation requirement mandated by the courts, notice that no statements are directly made concerning the total commercial and sport catch or the status of spawning escapements; fourth, an erroneous cause-effect relationship between Indian fishing and sport catches is asserted on the basis of the date on which the Boldt decision was rendered, ignoring the effects of unfavorable water conditions for sport fishing, non-reporting of catches, and the effects of inflation on recreational expenses; lastly, note the use of terms such as "conservative" and "noble game fish" designed to influence the reader to a particular point of view.

The courts have seen through these types of arguments for the baseless propaganda they represent. From a conservation standpoint, it makes no difference whether a fish is killed by a sportsman with a hook-and-line for recreational purposes or by an Indian net for commercial purposes.⁶³ The end result for the resource is the same. What then, is the issue? It is simply that sportsmen must now share the harvest with Indians because the discriminatory and unlawful regulations of the State regarding steelhead have been determined by the courts to negate the treaty fishing right for that species.

There is no reason to believe that a ruling which grants the Indians their full treaty rights will affect the necessary escapement of fish in the least. The only effect will be that some of the fish now taken by sportsmen and commercial fishermen must be shared with treaty Indians, as our forefathers promised over a hundred years ago.⁶⁴

But certain sportsmen just don't want to share. They claim that there aren't enough steelhead to support a commercial harvest. In other words, the

sportsmen's attitude appears to be "there aren't enough fish around to share, so we want them all."

Don't the Statistics Prove that the Steelhead Resource is Declining because of Indian Fishing?

There is no evidence that the steelhead resource has declined because of Indian fishing. In fact, the information which has been collected since the court's decision in U.S. v. Washington has enabled resource managers to obtain a picture of the status of steelhead runs for the Quillayute system. Survey results in 1978 revealed a spawning escapement ranging from 2 to 4 times the level observed from 1970 to 1973.⁶⁵ The Quillayute system, including its major tributaries the Sol Duc, Dickey, Calawah, and Bogachiel, has had an Indian net fishery at its mouth since time immemorial. Many sportsmen recognize these rivers as the places to go to seek trophy size steelhead, but their success has fostered controversy because they want the entire resource to themselves.

Proponents of steelhead decommercialization frequently cite sport catch figures as "evidence" for their claim that Indian fishing is damaging the resource. The use of such statistics is grossly misleading and totally unrepresentative of the status of the resource because of three factors: (1) without comparable statistics on spawning escapements or Indian catches, the size of the resource cannot be determined; (2) the catch reporting-systems employed by the Department of Game represent estimates derived from creel census studies and punch card returns and may not accurately reflect actual sport harvest; (3) obviously a reallocation of the steelhead harvest was mandated by the court to end the wrongful discrimination against Indian fishing resulting from the State laws.

One commonly depicted representation made by certain sports fishing organizations consists of references to sport catch statistics for the period 1975-1977 estimated by the Department of Game for the area encompassed by the court decision in U.S. v. Washington. These statistics, when presented in graphic form such as in Figure 4, show a dramatic decline.

However, such representatives are seriously misleading because the total steelhead harvest is not illustrated and the harvest pattern of those few years is not viewed within its proper historical context.⁶⁶ Figure 5 presents the same catch statistics, but viewed as part of the total catch during the period from 1962 to 1980.⁶⁷

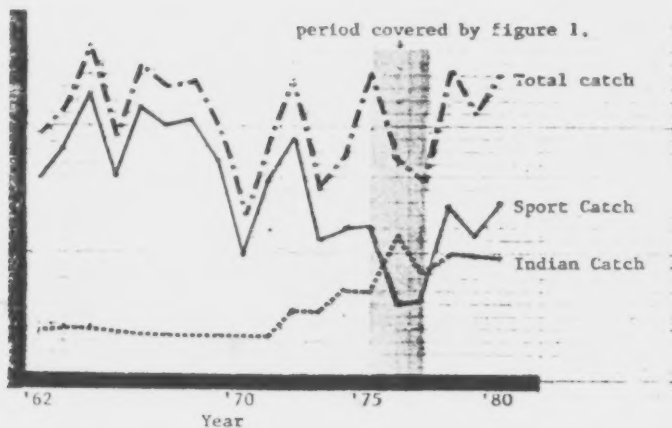
Several items of importance are illustrated by Figure 5.

Figure 4.

Sport Catch From
"Boldt Case Area"
1975-77



Figure 5.



- The total harvest of steelhead has not declined since the period prior to the "Boldt Decision."
- The characteristic harvest pattern of the sport fishery is clearly evident: there have been considerable fluctuations in the percentages of steelhead runs taken by sportsmen from year to year.⁶⁸
- Since the 1977-78 season, treaty Indian harvests in the Boldt case area have been significantly lower than sport harvests.⁶⁹
- The treaty harvest has been consistent and stable while sport harvests have fluctuated greatly.
- Since the 1977-78 season, the sport catch has exceeded the level experienced immediately prior to the Boldt Decision.

MYTH: INDIAN FISHERIES ARE UNCONTROLLED: INDIANS ARE CATCHING AN UNFAIR SHARE OF THE RESOURCE.

Sportsmen and their spokesmen have been intent perpetuating this myth for decades. The heart of the issue appears to be rooted in the "equal opportunity" notion that Indian fisheries should be subject to State regulations. Since Indian fisheries may not be regulated by the state except for proven conservation purposes, sports interests reason that they are uncontrolled.

The fact of the matter is that Indian fisheries have always been controlled and regulated by tribal customs and practices.⁷⁰ In recent years, since the turn of the century, many tribes have formally codified their policies and regulations into written form. In examining the question of tribal management of their fisheries and resources, the court found that the general pattern of Indian fishing regulations is designed to allow a certain portion of the run to escape in order to perpetuate the fish. Restrictions of tribal fisheries is usually accomplished through the use of one or more methods: (1) limiting the number of fishermen; (2) establishing fixed fishing locations; (3) restricting the length of nets; (4) maintaining a minimum channel width void of nets to permit fish to pass; (5) controlling mesh sizes; (6) closing the fishery for certain periods during the week; and (7) establishing fishing dates to harvest different species.⁷¹ In addition, since many Indian fisheries are located in rivers, certain natural regulation of the fishery occurs due to variations in water flows, tides, and debris.

The decision in U.S. v. Washington in 1974, set forth certain standards, criteria and procedures for management of both salmon and steelhead.⁷² By following these practices in accordance with the orders of the court, the resource is managed with much greater care and precision than at any time in the state's history.

A comparison of the character of the treaty Indian and the sports fisheries for steelhead clearly verifies the management implications of the information contained in figure 4: that it is the sport fishery which is uncontrolled, not the treaty Indian fishery. The treaty catch in steelhead is relatively consistent and predictable compared with the wild oscillations characteristic of sport harvest.

Indian fisheries are located within concentrated areas on very limited stretches of some 25 river systems in the Boldt case area. Prior to the start of each season, the Washington Department of Game and tribal managers jointly estimate the number of harvestable steelhead returning to each of these rivers. Tribal managers develop regulations and monitor development of the fishery through such efforts as run size evaluation to provide better

estimates of the number of fish returning to the river and catch sampling to determine the age structure and composition of the harvest (i.e. how much of the catch consists of hatchery fish). Fishing regulations are enforced by tribal officers who patrol the rivers. Catch is monitored daily by both tribal managers and the Washington Department of Game to ensure that the treaty allocation is not exceeded. Harvests by Indian fishermen are reported via landing ticket systems and as a result catch statistics for Indian steelhead fisheries represent highly accurate actual counts of fish taken. After the season is over, tribal managers survey rivers to estimate spawning escapements.

By comparison, steelhead sport fisheries operate throughout the lengths of the watersheds of well over 100 streams in the Boldt case area over a several month time period. Only a handful of enforcement officers from the Game Department are available to monitor fishing activities of tens of thousands of sportsmen who are dispersed over a very large geographic area. Only an extremely small fraction of these streams are evaluated while the fishery is occurring (through creel census surveys and aerial fishermen counts). For the vast majority of streams, the Game Department has no idea of the magnitude of the sport harvest until after the season has ended and punch cards have been returned.⁷³ In-season management of the sport fishery is virtually non-existent and spawning ground surveys are infrequently employed because of budgetary limitations.

With such a regulatory system, the sports fishery is nearly totally uncontrolled and impacts on the resource are at best unpredictable. In areas outside the Boldt case area, where no Indian net fisheries operate and where similar measures are employed to "regulate" the sport fishery, sportsmen have overharvested larger, wild steelhead.⁷⁴ If there is a problem with the steelhead resource, it is the sportsmen who are largely responsible.

Yet charges and allegations against Indian fishing persist in the media. As an example, in a letter to the editor of the Aberdeen Daily World, the President of the Grays Harbor Chapter of the Northwest Chapter of Steelhead and Salmon Council of Trout Unlimited charges the Quinalt Tribe of various, sundry crimes against the steelhead resource, blaming the tribe in particular for the destruction of wild runs in the Chehalis and Humptulips Rivers.⁷⁵ In a response to the letter, the President of the Quinalt Tribe stated:

I am particularly disturbed that an officer of an organization of sportsmen in Grays Harbor would so blatantly employ bald assertions, half-truths and innuendo in an obvious attempt to arouse public sentiment against the Quinalt Indian Nation... I have written this letter to correct some misconceptions which you seem anxious to perpetuate...The proportion of Chehalis

River steelhead harvested by Quinault fishers has steadily declined since 1975. During the most recent season for which complete data are available, 1978-9, sportsmen took 1.9 times as many steelhead from the Chehalis River as did Quinault fishermen ...The progeny of the steelhead which have been subjected to Quinault fisheries on the Chehalis system have not yet matured to spawn. If there is a conservation problem with Chehalis steelhead, it developed prior to the time when Quinault fisheries were re-established on the river. If there is a true conservation need, who is acting irresponsibly - the Quinaults who have steadily reduced their portion of the harvest since 1975 or the sportsmen?

On the Humptulips River, the Quinault Nation has always targeted its fishery on hatchery stocks...Because hatchery produced steelhead tend to return to the Humptulips River earlier than their wild counterparts, the Quinault fishery has been designed to concentrate its effort during the early part of the season so as to minimize its impact upon native stocks...On March 12th, when the proportion of hatchery fish in our catch began to decline substantially, we closed our Humptulips steelhead fishery after harvesting a total of 2,194 fish. Despite our early commercial fishery, from the very beginning of the 1979-80 season sport fishermen have taken more steelhead from the Humptulips River than Quinault nets. The Humptulips sport fishery, which had harvested 3,039 steelhead by March 16th, continued to fish native stocks until the end of March. If the native steelhead run is indeed in "very serious trouble" as you assert, who is in fact acting irresponsibly toward the resource - the Quinaults, who harvested fewer fish and targeted on hatchery fish or the sportsmen?⁷⁶

But Aren't Indians Catching an Unfair Share of the Steelhead?

Sportsmen and their political spokesmen have been very adept at selectively presenting catch statistics which appear to show how 'unfair' it is that Indians are catching more fish than sportsmen. The claims raised by the pro-decommercialization interests are founded in two principal factors.

First, during the season, steelhead "scorecards" are sometimes published showing that Indians have taken nearly 100% of the catch. The publishers of the propaganda, however, neglect to mention that during the season, the only source of catch information on many rivers is the data provided by the strictly monitored tribal catch. Sport catch estimates are not generally available until several months after the season is over when the punch cards are returned and analyzed.

Second, catch data on certain river systems has been used to show disproportionate harvests favoring treaty Indian fishermen. For example, in his comments introducing S. 874, Senator Slade Gorton cited catch statistics for the 1979-80 season for the Queets and Quinault Rivers as follows:⁷⁷

	<u>Indian</u>	<u>Non-Indian</u>
Queets	2,298	473
Quinault	4,207	160

What Gorton does not mention is that there are numerous other examples where sportsmen have taken a disproportionate share of the harvest. Some of those rivers in the greater Seattle area are listed below:⁷⁸

	<u>Indian</u>	<u>Non-Indian</u>	<u>% Sport Harvest</u>
Nisqually	1,318	2,764	68
Green/Duwamish	4,488	10,168	69
Stillaguamish/Snohomish	10,185	25,006	71
Puyallup	22	2,188	99

Are Indians taking more than their lawful 50% entitlement of steelhead? Are sportsmen taking more than theirs? What's the real story?

Disproportionate catch sharing is not an adequate or proper criterion by which to measure compliance with the allocation standards set forth by the courts. The principle governing allocation is based on the opportunity to harvest fish, not catch. Unequal catch statistics result from two major sources: (1) unexercised opportunity; and (2) lack of sufficient regulations of a fishery.

There is generally no problem in providing treaty Indian fisheries with their opportunity since they are usually located in front of river sport fisheries. Therefore, the treaty net fishery must be controlled so as to ensure that sportsmen receive their opportunity. Commercial net fisheries of the treaty tribes, as discussed earlier, are strictly regulated and monitored so that they do not exceed their lawful entitlement to a certain number of harvestable fish.

For example, the numbers of harvestable steelhead from the winter run for the Queets and Nisqually River systems for the 1979-80 season were 4,600 fish and 3,000 fish respectively.⁷⁹ According to the 50% allocation rule that governs each of these river systems, treaty Indians and sportsmen should have been entitled to take 2,300 steelhead from the Queets River and 1,500 steelhead from the Nisqually River. But what actually happened?

	<u>Number Harvestable</u>	<u>Treaty Catch</u>	<u>Sport Catch</u>
Queets River	4,600	2,298	473
Nisqually River	3,000	1,313	2,764

On the Queets River, treaty Indians harvested almost exactly the number of fish in their entitlement. Because of the absence of sufficient exercise of available opportunity (due partially to season regulations adopted by the Department of Game), sportsmen caught only a small fraction of their share. In fact, after post-season spawning ground surveys had been completed for the 1979-80 season, it was determined that the sport fishery actually had the opportunity to harvest 6,995 steelhead without affecting the established spawning escapement goal.⁸⁰ On the coastal rivers, treaty Indian commercial net fisheries for steelhead have existed continuously since time immemorial. Healthy commercial and recreational fisheries have co-existed on these rivers for decades and it is to these same rivers that sportsmen go seeking their trophy-sized steelhead. The health of both commercial and sport fisheries on the coastal rivers has been due to tribal management of their on-reservation fisheries without interference by the State Department of Game. Prior to the 1979-80 season, the coastal treaty net fisheries normally accounted for a much higher portion of the total catch than 50%. However, after the 1979 ruling of the Supreme Court in the Passenger Vessel case, which determined that harvests taken on-reservations must count toward the 50% treaty entitlement, the portion of the harvest available to treaty fisheries has decreased.⁸¹ The apparent inability of sportsmen to take their full share of the harvest not only represents an unconscionable waste of a valuable natural resource, it portends decreased future productivity of the steelhead stocks, and consequently reduced harvest, because of over-spawning. The courts have noted that:

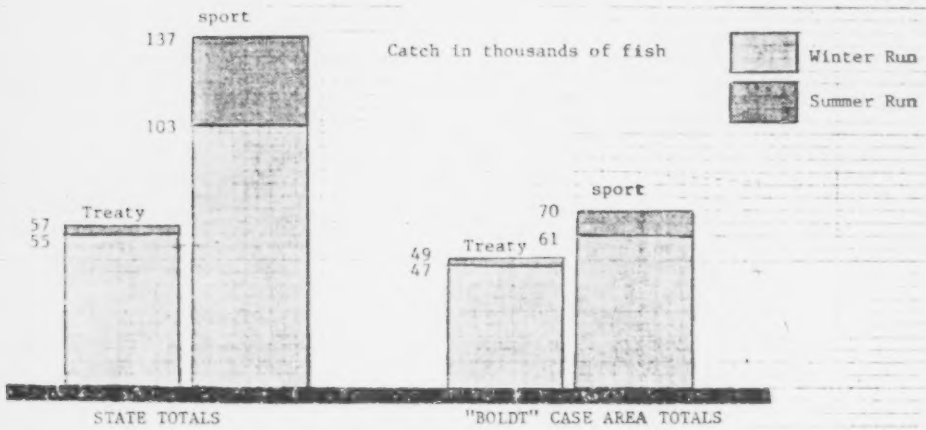
adequate regulation...must recognize that fish runs may be harmed by harvesting either too many or too few fish returning to spawn.⁸²

On the Nisqually River, a different situation occurred. In this case, like the Queets, the treaty Indian fishery was controlled so that its harvest was approximately 200 fish fewer than its entitlement. However, the sport fishery was estimated to have taken 2,764 steelhead (1,264 more than its entitlement), a quantity nearly equal to the entire number of fish determined to be harvestable. In this instance, the absence of sufficiently restrictive controls to prevent over-fishing by the sport fishery resulted in a reduction of spawning escapement allowances.

Pro-decommercialization interests have also been hesitant to depict the

catch sharing of the total steelhead harvest because the information does not support their contention that Indians are over-fishing. The relative catches by treaty Indians and sport fisheries is illustrated graphically by figure 6.

Figure 6.: Distribution of steelhead catch for the 1979-80 season (Source: Washington Department of Game).



Since the signing of the court order establishing the principles and procedures which govern steelhead management and allocation,⁸³ treaty tribes have managed their fisheries in several ways to alleviate their impacts upon sport fisheries, and as a result sportsmen have accounted for over 50% of the catch. Some of the measures the tribes have adopted are: (1) not fully exercising their opportunity to harvest summer-run steelhead, a race of fish particularly prized by sportsmen, especially fly fishermen; (2) not fully exercising their opportunity on the majority of smaller river systems, allowing sportsmen to take the entire harvest; and, (3) in many instances targeting fisheries on hatchery stocks, improving access by sportsmen to larger, more desirable wild fish. Evidently, however, these efforts have not been appreciated by a few sportsmen, who are so emotionally opposed to the taking of any steelhead by any means other than hook-and-line that they are seeking to decommercialize the resource despite the severe hardships such action would cause to Indian tribes.

Clearly, the arguments and selective statistics presented by proponents of steelhead decommercialization are highly misleading. The evidence preponderately if not conclusively demonstrates that if any fishery poses a danger to the resource or is insufficiently controlled to implement the management and allocation orders of the courts, it is the sport fishery, not the commercial net fishery conducted by treaty Indians. But then, the decommercialization issue is hardly a rational one from the standpoint of some sportsmen.

MYTH: STEELHEAD SPORTS FISHERMEN PAY ALL THE COSTS OF STEELHEAD MANAGEMENT AND ENHANCEMENT

Another myth perpetuated by various sports fishing interests is that steelhead sports fishermen pay all the costs of management and enhancement through their license fees. Such claims have been proven to be false repeatedly in the courts, yet the claims, like those concerning overfishing by Indians, persist.

As far as enhancement is concerned, the court has specifically stated:

The Game Department has received federal financial assistance in the amount of 50% under the Anadromous Fish Conservation Act, 16 U.S.C. 757 for construction and operation of its steelhead hatcheries.⁸⁴

Under the Anadromous Fish Act, the Game Department receives federal funds for the operation of several rearing facilities in the Boldt case area, including those located on the Green River, Tokul Creek, Shelton, Bogachiel, Bear Springs, Calawah, and Skykomish. These facilities were originally constructed with the assistance of Anadromous Fish Act funds. In addition, the Chambers Creek facility, the principal egg incubation station in the State, is also supported by these funds.⁸⁵

The artificial propagation facilities operated by the Washington Department of Game were constructed in response to mitigation requirement to replace wild fish lost through environmental damage from such activities as dam construction. Based on replacement costs, the financing for these facilities was provided by the following sources:⁸⁶

<u>Source</u>	<u>Amount</u>	<u>Percentage</u>
State	\$ 7,807,320	23%
Federal	10,331,238	31%
Private/Local	15,782,901	46%

In addition, tribally operated hatcheries in 1979, released 13% of the total steelhead hatchery production in the Boldt case area. Occasionally, even newspaper columns written for sportsmen had openly admitted that the Game Department receives federal funds for its steelhead propagation efforts, but some sportsmen continue to make their claims that since their license fees pay for all the hatchery steelhead, Indians shouldn't be entitled to catch them.⁸⁷

The operational budget request for the 1981-83 Biennium categorized

expenditures and income sources for Department of Game activities into seven major areas as follows:

Area	State	Funding Source	
		Federal	Private/Local
Administrative Services	66.7%	30.7%	2.6%
Engineering	84.4%	15.6%	-
Wildlife Management	70.4%	29.6%	-
Habitat Management	30.7%	51.2%	18.1%
Wildlife Enforcement	83.6%	16.4%	-
Fisheries Management	42.9%	50.1%	7.0%
Capital Construction	51.4%	48.3%	0.3%
Propagation Facilities*	23.0%	31.0%	46.0%
TOTAL BUDGET	54.0%	39.0%	8.0%

* Prorated for 20 year lifetime

In each budget classification, substantial portions of the funds are provided by federal sources through the Departments of Agriculture, Commerce, Defense, Interior and others. These cost estimates do not include funds expended for habitat protection and improvement activities that benefit both salmon and steelhead.

Less than 13% of the individuals who purchase fishing licenses from the Washington State Game Department acquire steelhead punch cards; license and permit fees paid by steelhead sport fishers account for approximately 11% of the Game Department's fisheries management budget.⁸⁸ Steelhead sport fishermen are being heavily subsidized by the federal government, anglers who don't choose to fish for steelhead, and the general public (through taxes and mitigation costs associated with water and power development projects).

MYTH: STEELHEAD ARE MORE VALUABLE FOR RECREATIONAL PURPOSES THAN COMMERCIAL PURPOSES

Proponents of decommercialization have bandied about various claims that the value of a sport-caught steelhead is worth somewhere in the neighborhood of \$100 while the value of a steelhead sold for commercial purposes brings only about \$20 to an Indian fisherman. These claims are being cited as a justification for decommercialization. The basis of the argument is fundamentally identical to the "equal opportunity" and "wise use" doctrine of the State of Washington which has been struck down repeatedly by the courts.⁸⁹

The fallacy of the argument, besides erroneous economic assumptions, is that the "value" of steelhead to treaty Indian tribes can be measured wholly in terms of the dollars paid to individual fishermen for their catch. First of all the treaty fishing right is a tribal right, not one belonging to individual Indians.⁹⁰

To the tribes, the right to fish for all species is critical to their ability to maintain the essential elements of their cultures and way of life. Each tribe depends upon the fisheries resources that are available.

There was considerable local diversity in the availability and importance of specific animal, plant and mineral resources used for food and artifacts. But one common cultural characteristic among all of these Indians was the almost universal dependence upon the products of an aquatic economy, especially anadromous fish, to sustain the Indian way of life. These fish were vital to the Indian diet, played an important role in their religious life, and constituted a major element of their trade and economy. Throughout most of the area salmon was a staple of food and steelhead were also taken, both providing essential proteins, fats, vitamins, and minerals in the native diet.⁹¹

To many tribes, steelhead has traditionally been a crucially important source of winter food and income which enables them to maintain their communities. If these tribes were to be deprived of the ability to take steelhead for their own uses and purposes by their accustomed ways, their continued existence as fishing societies would be seriously impaired. The ability to be able to continue to fish is certainly of far greater value to the tribes than can be measured in terms of the dollars received by an individual fisherman.

The right to fish for all species available in the waters from which, for so many ages, their ancestors derived most of their

subsistence is the single most highly cherished interest and concern of the present members of plaintiff tribes, with rare exceptions even among tribal members who personally do not fish or derive therefrom any substantial amount of their subsistence.⁹²

The courts recognized the central importance of fishing to Indian tribes in determining that no remedy other than assuring the right to take fish was available and adequate to protect the treaty fishing right. The courts also determined that the treaty rights asserted are unique and the damages which have been or will be sustained are not susceptible of definite monetary determination.⁹³

It is troubling to think that people could become so enamored of the dollar that they could even begin to think that money alone could ever hope to adequately compensate a people for destruction of their cultures and heritage. The great strength of the United States is sometimes said to lie in the diversity of its people. But one of the great tragedies is that the society is bereft of common ties to the past. In other words, it is culturally poor and cannot appreciate the importance of different values held dear by people who have common ties to a history extending back through time for thousands of years.

Because of the absence of common cultural ties, modern U.S. society seems to have adopted money as a medium of value and as a basis for compensating someone for any wrong that might be done to them. But money is not an adequate remedy for all things.

An example may serve to help clarify this somewhat esoteric concept and enable someone unfamiliar with the importance of fishing to Indian cultures to better appreciate its value. If Congress were to force you to lock one of your children in a small, airtight room for a year and then pay you for the loss of his life by giving you the dollar value of the oxygen he might have consumed for the next ten years, would you think the compensation was adequate? This gruesome analogy is similar to what some sportsmen are suggesting should be the basis for deciding whether certain Indian cultures should survive or perish. Value is a multi-dimensional concept and people with different cultures will define it differently.

What is the economic value of steelhead?

Proponents of steelhead decommercialization have defined the recreational value of steelhead on a per fish basis by equating total expenditures by sportsmen for such items as gasoline, food and fishing equipment while they place the commercial value at merely the ex-vessel

income to an individual Indian fisherman. Dollar values for commercial and sports caught steelhead derived through such procedures are not comparable.

If commercial fisheries are evaluated on the basis of their contribution to the economy, an entirely different dollar value results. According to a 1980 study conducted by Washington State University, for each dollar paid to a commercial fisherman for his catch, \$2.06 in income is generated in the processing sector and \$4.54 is generated in support sectors of the economy.⁹⁴ In comparable dollar terms, then a commercially harvested steelhead might generate \$20 to an individual Indian fisherman, but it would also generate total economic activity to the region of \$152.

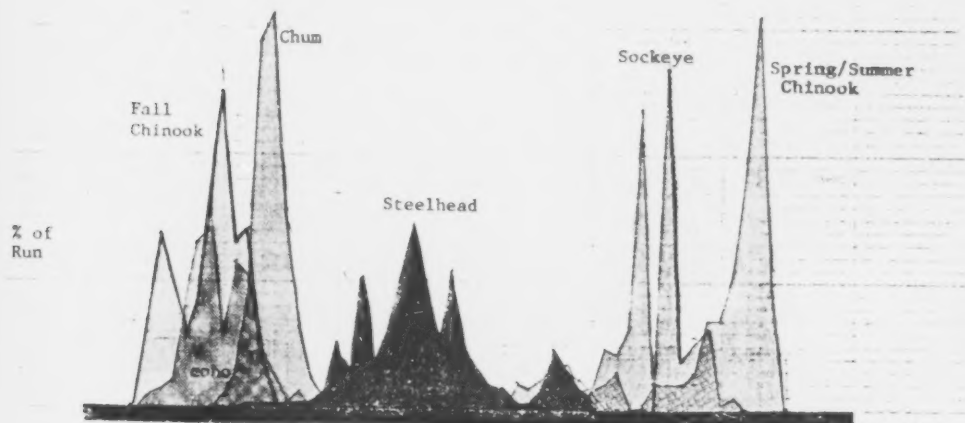
Furthermore, many Indian tribes have established their own fish processing and marketing systems. The removal of steelhead as a commercial species would threaten their viability as enterprises since they depend very heavily upon the ability to handle fish year round as the fish of different species become available. In some instances, the reliance of Indian communities and enterprises upon steelhead as an economic resource has increased over historic levels because of inadequate regulation of non-Indian salmon fisheries.⁹⁵

The contribution of steelhead to the well being of Indian communities may be felt in ways other than the dollar amount paid to individual fishermen. The steelhead resource is of vital importance in maintaining the social structure and stability of many Indian communities because it enables tribal members to maintain gainful and meaningful employment in desirable fishing occupations throughout the year. If the fishing basis for the livelihood and culture of a community were to be threatened by decommercialization of steelhead, the social welfare costs would be enormous. Moreover, many tribes collect taxes from their fishermen and enterprises. The elimination of steelhead as a revenue source for tribal governments could impair the ability of those governments to provide for the needs of their communities. The implications of decommercialization for some Indian tribes are frightening: deepened emotional and economic poverty accompanied by increases in dependency.

Several items of importance can be derived from examination of figure 7. First, contrast the peaks of activity that characterize the short periods of time when each of the salmon species returns to the river with the relatively long duration of the steelhead season. Winter run steelhead contribute to the Quinault River fishery for approximately six months of the year. Secondly, that there is an extensive period of time when steelhead during the winter months enables Quinault River fishermen to operate nearly year round. Lastly, notice the significant overlap in the run timing of steelhead near the beginning and end of the season. Fisheries management and regulation

must take these timing overlaps into consideration to account for fish that may be harvested incidentally.

Figure 7.: Run timing on the Quinalt River



One argument commonly raised by sportsmen and their political allies is that steelhead constitute less than one percent of the total treaty Indian harvest of fish so decommercialization should not interfere with the ability of tribes to earn their livelihoods by fishing. While such statistics may be reasonably accurate on a regional basis, there is considerable variation among the tribes as to the importance of steelhead to their separate economies.

Because of inadequate regulation of the ocean fishery, the dependence of certain coastal treaty Indian tribes upon steelhead as a source of income for their fishermen has been increasing. Steelhead are not only taken at much lower rates by ocean fisheries than salmon, they also command higher prices than most species of salmon. Figures 8 and 9 graphically illustrate the increasing importance of steelhead to treaty fisheries of the Hoh Tribe. Figure 8 depicts the growing importance of steelhead as a component of the total catch by the Hoh fishermen. In 1969, steelhead accounted for approximately 23% of the total catch (in numbers of fish); in 1980, it accounted for 64%. This increased importance of steelhead has not resulted from significant increases in the harvest of steelhead, but in substantial reductions in the availability of chinook and coho salmon (figure 9).

Figure 8

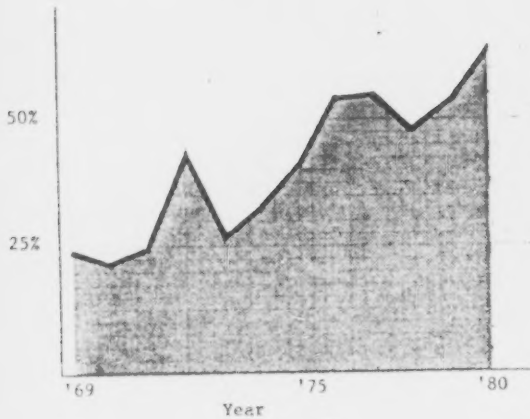
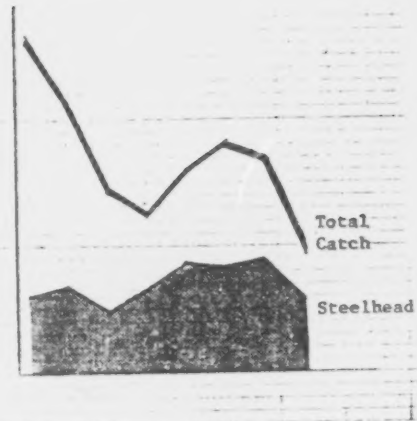


Figure 9



Indian fishermen in each of the fishing villages located on the coastal rivers, the Quillayute, Hoh, Queets and Quinault, derive a very large proportion of their income from the sale of steelhead.

	% of Catch Consisting of Steelhead	% of Income to Individual Fishermen Derived from Sale of Steelhead
Quileute <u>a/</u>	21.6	24.0
Quinault <u>b/</u>	23.5	34.6
Hoh <u>c/</u>	63.9	66.5
Queets <u>b/</u>	58.9	70.6

a/ Quileute Fisheries Department, 1979-80 season.

b/ Quinault Department of Natural Resources based on preliminary catch statistics for the period May 1, 1980 through April 30, 1981.

c/ Hoh Tribal Fisheries, 1979-80 season.

By raising the argument that steelhead comprise one percent of the total Indian catch, pro-decommercialization interests fail to distinguish between individual tribal governments that are the parties to the parties to the treaties. Instead, they choose to employ the misleading and fundamentally

racist term "Indian" to further their contentions by confusing those who may be uninformed on the nature of the tribal treaty fishing right. The treaty fishing right is held by independent tribal governments, it is not one held collectively by all individuals who happen to be of Indian heritage.

There are no definitive studies which determine the economic value of a sport caught steelhead. The one hundred dollar plus figures commonly cited by Game Department officials, sportsmen and political proponents of decommercialization are derived from a 1975 report prepared for the Game Department.⁹⁶ The procedures used consist of trying to quantify out-of-pocket expenditures by sportsmen for each fishing trip, estimating the number of trips taken per fisherman and multiplying the two to obtain a total dollar figure. The total dollar figure is then divided by the number of steelhead estimated to have been taken by sportsmen to obtain the so-called "value" of a sport caught steelhead.

Application of the rationale and procedures to place a value on a sport caught fish employed by proponents of steelhead decommercialization to salmon fisheries yields similar results. Consequently, if the sportsman's faulty arguments are taken as valid, the logical conclusion is that society would receive greater benefit at far less cost to the general public by several orders of magnitude from decommercializing the non-treaty share of chinook and coho salmon rather than trying to decommercialize the treaty share of steelhead.⁹⁷

The high economic values for a sport-caught steelhead are derived by the so-called expenditure method.

Briefly, the notion here is that the value of fishing is given by the expenditures of people engaging in it - for equipment, bait, travel, food and drink. The rationale is that if fishing were not worth this much to people, they would not have put forth these outlays to enjoy it...While of little utility as a measure of the value of sport fishery resources, the large numbers generated by expenditure surveys have often excited public officials into repetition of such surveys.⁹⁸ (emphasis added)

The procedures used to estimate out-of-pocket expenditures per trip may include the use of demand type economic models⁹⁹ or simple guess-timation. However, surveys are most commonly employed by researchers investigating the economics of recreational fisheries. Only one study directly concerning expenditures by Washington State Steelheaders was encountered in the literature, one performed by the National Marine Fisheries in 1977. On the basis of a 60% return of some 11,268 questionnaires, the

researchers estimated the following expenses incurred to fish the first, second or third favorite stream of each sportsman completing the survey.¹⁰⁰

STREAM MOST OFTEN FISHED

Expense Item	1st	2nd	3rd
Transportation	\$4.52	\$3.47	\$3.16
Lodging	1.04	.64	.57
Food	2.97	2.13	1.92
Tackle, Bait, etc.	2.14	1.35	1.12
Guide Service	.87	.58	.50
Boat	.57	.38	.32
Other	.60	.22	.29
Total/Trip	\$12.71	\$8.77	\$6.74
Number of Trips	9.13	3.30	1.60
Total Annual Expense	\$116.04	\$28.94	\$155.76

The average expenditure per trip estimated by this study was \$11.10. This figure compares with an estimated \$23.86 per trip (including amortization of capital equipment such as fishing gear, boats, motors, etc.) for steelhead fishers in Oregon (see footnote 99 for source) and \$27.31 estimated by the Department of Game (source unknown).¹⁰¹

Using the average number of angler days estimated by the Game Department to be expended by a sports fisherman to catch a steelhead (4.54 days, see reference in footnote 101), the value per sport-caught fish apparently lies somewhere between \$50 and \$124. But what are the real market limits? Since the sportsman is evidently willing to spend more money to catch a fish than it would cost him to buy one in a market, he must be purchasing some other commodity. That commodity is recreation.

Researchers investigating economic values of sport fishing have concluded that:

The output is not to be measured in quantities of fish caught, but rather in the less tangible (if no less real) enjoyment of fishing. The quantity of fish caught is an incidental, though not unimportant, ingredient of the values created. While catching success usually enhances recreational enjoyment, it is

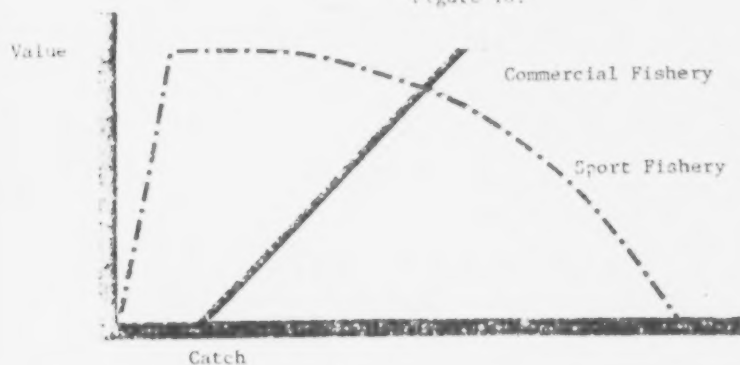
possible to catch too much fish so that the "sport" is lost from sport fishing...The lack of crowding is generally a more important consideration in recreational fishing than number or size of fish caught.¹⁰² (emphasis added)

Researchers have studied the question of what constitutes "value" to sportsmen seeking salmon and steelhead and have found that catch was less important to steelheaders than seven other factors.¹⁰³ Those results have extremely interesting implications.

Obviously, the procedures used to estimate the recreational value of a steelhead are highly dependent upon the scarcity of the resource. To be precise, the sport value is inversely proportional to the success rate of the angler. For example, if there were so many steelhead available that the catch rate per trip were to be doubled (say through decommercialization and elimination of competition from Indian net fishing), the "value" would be halved. Conversely, if so few steelhead were available to sportsmen that their catch rate per trip is halved, the so-called "value" per steelhead would be doubled.

Consequently, the argument can be made that the greatest economic benefit per sport caught steelhead would accrue to society by increasing the scarcity of the fish until sportsmen were no longer to spend their money to go fishing. In other words, if the rationale behind the decommercialization movement is truly to maximize the economic value of steelhead, the proposed legislation should be abandoned. Instead, Congress should enact a law that would allocate a larger portion of the resource to commercial treaty Indian fisheries and prohibit the killing of steelhead by sportsmen. Such a strategy would be perfectly consistent with sound principles of economic theory and available information concerning the value of the recreational fishing experience (as opposed to the catching and killing of fish). Figure 10 illustrates the utility or value function appropriate for recreational and commercial fisheries.

Figure 10.



For recreational fisheries, a great value is placed on the chance to take the first fish. The next few fish caught may have nearly the same value to a sportsman, but as more and more fish are caught, it becomes too easy and hence no fun. In other words, after a point, the marginal value of an additional fish to recreational fisheries decreases as the catch increases.

For commercial fisheries, the first few fish taken may have little true economic value (assuming that only one species of fish is taken) because the income derived from the sale of the catch may not be sufficient to cover the fixed costs of operation. But after the fixed costs have been paid, the income from each additional fish represents pure economic profit.¹⁰⁴

Questions of property interests in the resource aside, at some point greater economic benefit to society can be realized by allocating a portion of the available harvest to sportsmen and a portion to commercial fisheries than could possibly be derived by allocating the entire resource to either purpose exclusively.¹⁰⁵

There is no rational reason why healthy commercial and recreational fisheries for steelhead cannot coexist compatibly on the same rivers. On the Olympic Peninsula, for example, some of the most renowned rivers for sport fishing for trophy-sized steelhead, like the Soleduc, Bogachiel, and Quinault, have had commercial net fisheries for steelhead located at their mouths for centuries. The court in U.S. v. Washington specifically found:

Notwithstanding the Indian commercial net fishing on the Lower Quillayute River, catch statistics from punch card data of the upriver sports fishery show an increase on the sport steelhead catch in recent years. This increase could not have occurred unless increased numbers of steelhead had passed through the lower river Indian net fishery.¹⁰⁶

The Quinault Tribe successfully manages its river steelhead run such that both a net commercial and a hook and line sport fishery operate side by side and these uses are not incompatible under the tribal management.¹⁰⁷

Since experience has proven that steelhead can be managed for both commercial and sport purposes by tribes, why should the two uses be considered incompatible by the Department of Game? The answer is quite simple: The control of the Game Department by its sportsmen constituency.

The "value" arguments of sportsmen also make the implicit contention that unless steelhead is decommercialized, society will not obtain the dollar

benefits which might result from their expenditures. Such a contention is unsupported by any credible evidence. The simple fact of the matter is that to the sportsman, steelhead may very well be replaceable because the thing of "value" that is purchased is the recreational experience of which the fish is but a part (see reference noted in footnote 103). If steelhead fishing is for some reason unavailable, the recreational dollars might be expended by sportsmen to catch salmon (each year, the number of salmon taken in fresh water approximately equals the number of steelhead taken), cutthroat trout, bass, or carp, or perhaps the money will be spent in other ways, such as camping, hiking, going to movies and restaurants, etc.¹⁰⁸

In many respects, steelhead sport fishing is a commercial fishery in itself. The item marketed is not the fish, but recreation. The true economic value of steelhead is the marginal one, i.e. the amount that a sportsman is willing to pay to catch steelhead over and above what he is willing to pay to enjoy his next most preferred form of recreation.

The "value" arguments employed by sportsmen not only fail to recognize and respect the unique values the steelhead may provide to treaty tribes, they are based on economically fallacious premises.

MYTH: STEELHEAD SHOULD BE DECOMMERCIALIZED BECAUSE THE COSTS OF MANAGEMENT EXCEED ITS VALUE TO INDIANS.

In the present austerity mood of the Republican Administration and Congress, this argument has been seized upon by sportsmen and their political allies as one of the main reasons to justify the decommercialization of steelhead. Statistics like "it costs twice as much to manage steelhead for commercial purposes as Indians receive for selling the fish" are used to rationalize the abrogation of treaty fishing rights by allocating the entire steelhead resource to sportsmen.

Upon examination, this myth can be seen to be standing on two rather fragile pillars. The first is the assumption that "value" to treaty tribes can be measured solely in terms of dollar income to individual Indian fishermen. Problems inherent with this assumption have already been discussed in the previous section.

The second pillar is the unstated, but implicit assumption that the costs of managing a sport fishery are small in comparison to costs of managing a commercial fishery. Such an assumption is patently false.

To manage the steelhead resource adequately, three elements are essential:

- * The run size to a river must be known
- * The needs of the resource for perpetuation must be known
- * The fishery must be regulated to achieve the proper balance between harvest and escapement.

These elements are required regardless of whether the resource is managed for commercial or recreational purposes or a combination of both. Recall the comparative descriptions of treaty Indian commercial fisheries and recreational fisheries presented earlier. Clearly, the costs of adequately managing the sport fishery would be enormous.

How much would it cost to truly manage the sport fishery? The fishery occurs along the lengths of well over one hundred streams. It is conducted by some 110,000 sportsmen over a period extending for several months of the year. Just the task of accurately counting the number of fish taken would be tremendously expensive to say nothing of the costs required to establish the information and enforcement systems necessary to manage the resource properly.

Anglers and Game Department officials have sometimes resorted to the "axe in the forest" theory that the sports fishery doesn't require regulation and the expenditure of funds for management because the "nature of a sports fisherman's activity can't jeopardize the resource." The rationale behind the theory is basically that a man with an axe can't chop down the trees fast enough to destroy a forest. The fallacy, of course, is that the forest can be destroyed if it is small enough or enough men with axes are allowed to cut the trees.

For the steelhead resource, as with salmon, productivity depends upon maintaining a proper level of spawning escapement. Either too many or too few spawners can harm the resource. For the fishermen, there are no limits to the number of sportsmen who are permitted to obtain licenses to fish for steelhead. Game Department officials have long recognized the need to regulate the taking of wildlife and even to ration the opportunity to harvest certain scarce species. Even with steelhead, the harvest activity of sportsmen has been somewhat limited by bag limits and season restrictions. When the necessary expenditures for managing the resource properly are not made, the costs accrue first to the resource and ultimately to society (although perhaps not in ways that are directly felt by the general public).

Sportsmen are presently being heavily subsidized because the license fees they are being asked to pay do not begin to cover the real costs of providing them with their recreational pastime of catching steelhead. It is interesting to speculate just how much demand there would be for steelhead fishing if sportsmen were forced to pay the full costs necessary for proper management of the resource. As with publically provided recreation generally, sport fishing for steelhead is not priced and paid for by the direct beneficiaries of the service provided by the resource.

One of the benefits of the court's decisions in U.S. v. Washington has been that much of the information necessary for managing the resource has now become available at much more reasonable cost because of the presence of regulated treaty Indian net fisheries for steelhead. The court after determining that the only available means of enforcing and protecting the treaty fishing right was a quantitative apportionment of the harvest, set forth certain management principles, methods and procedures for addressing critical management questions.

At the time of the court's decision in 1974, the Game Department had very limited data on the total number of fish in the steelhead runs.¹⁰⁹ The basic philosophy of Game Department management of the steelhead was akin to telling the sportsmen: "There's the river. We don't know how many fish are there or how many we need to save, but go at it." The court noted the deficiencies in Game Department management and took special care to point out that:¹¹⁰

The Game Department would be able to better manage the steelhead resource if its facts and data were specific as to individual river systems, but budget limitations of the Game Department preclude the acquisition of this data at this time.

The individual river systems are, of course, the locations where the primary steelhead fisheries of the treaty tribes are placed. The presence of commercial net fisheries for steelhead, combined with the court-ordered standards of management, provides a consistent and convenient source of critical management information. Data from tribal fisheries are now commonly employed as a basis for determining the size of the returning steelhead runs and their age structures and compositions. Because tribes are intimately concerned with the proper management of the specific runs of fish they harvest, they make the necessary investments to gather important information on spawning grounds and the size and timing of smolt migrations, protect and preserve the fisheries habitat, and address difficult questions regarding the productive potentials of salmon and steelhead stocks.

Native management has been the catalyst for significant improvement in the overall management of the salmon (including steelhead) resource...Treaty fisheries are centered in terminal areas. This fact has allowed Treaty Nations to provide detailed and specific studies of the regions of origin and adjacent streams. Thus the store of knowledge on which to base prudent regulation has been greatly increased. Further, Native involvement has provided a mechanism for reviewing action by State agencies holding them accountable for their deeds and misdeeds which were largely hidden from public scrutiny before [U.S. v. Washington]. The exposure has made state practices more visible to all [fishers].

Treaty nations are now energetically involved in the whole range of resource protection and development activities, including identifying causes of environmental damage and opposing their continuation; raising and planting hatchery-bred fish; tagging studies, preparing (sic) and other research and study tools; conducting detailed stream surveys and documenting the conditions and needs of the rivers and streams; stream clean-up and rehabilitation; data collection and education of [their] children to the importance and methods of protecting the resource.¹¹¹

But what of the State Department of Game's management program? After the decision of the court in U.S. v. Washington, the Game Department, confronted for the first time with the requirement to truly begin to manage

the steelhead resource, turned to the federal government for financial assistance claiming it did had neither the information nor the capability to meet the standards set forth by the courts. The federal government, through the U.S. Fish and Wildlife Service, responded by providing implementation funds for the Game Department on an interim basis with the understanding that the necessary costs would be supported by the state in the future.

Funds to manage steelhead have been provided to the Department of Game through the U.S. Fish and Wildlife Service via contract since 1975.¹¹² The Game Department's steelhead management program, commonly known as the Treaty Indian Program, now has a budget of approximately \$1.8 million. It is this figure which is commonly referred to as the cost of managing steelhead for commercial purposes in response to the orders of the courts.

However, this dollar figure has been improperly attributed solely to the costs of managing steelhead for commercial purposes. The operations funded under the contract pertain at least equally to management of the sport fishery.

Prior to the establishment of the so-called "Treaty Indian Program," the Game Department simply had no real management capability. This is readily supported by examining the activities funded under the guise of managing steelhead for commercial purposes. The "Treaty Indian Program" budget is broken down into four basic areas as follows:

Program Administration	\$ 68,250
Research	422,264
Steelhead Data and Management	732,515
Steelhead Buyer and Regulation	589,211
Total Cost	\$1,812,240

Program administration costs allow coordination of all Game Department programs to implement the conditions of the cooperative agreement contract with the U.S. Fish and Wildlife Service.

The research program is intended to provide biological answers to questions involved in steelhead management. Two research projects are funded for understanding the life histories of wild and hatchery steelhead and their relationships to other salmonids. A study at Snow Creek is designed to establish a model for natural steelhead production, including environmental factors, relationships between salmon and steelhead enhancement, and impacts on resident salmonid populations. A project in the Skagit River is intended to define the life history of Skagit steelhead, and determine a practical

methodology for monitoring steelhead production and abundance which can be applied to other river systems in Washington.

The steelhead Data and Management portion of the program accumulates, interprets and analyzes biological harvest and escapement data essential to determining the number of steelhead which can be safely harvested. The activity includes exchange of data on catches from punchcards, conducting spawner suveys on five rivers, and conducting an experimental project designed to determine the "optimum" number of hatchery-reared steelhead smolts that should be planted in western Washington streams.

The buyer and regulation portion of the program monitors steelhead trout taken and sold pursuant to the exercise of Treaty Indian fishing rights and illegal trafficking by non-Indians.¹¹³

The activities funded through the "Treaty Indian Program" are all essential to proper management of the resource. The costs involved in simply monitoring the sport catch in ten rivers and conducting spawning suveys on five rivers provide an inkling of the true costs associated with maintaining a sport fishery for steelhead.

The costs associated with the "Treaty Indian Program" of the Department of Game should be much lower because of two principal reasons. First, the absence of a management program within the Department prior to the decision in U.S. v. Washington necessitates the collection of basic biological information. Second, the organizational structure of the State of Washington for anadromous fish management results in duplication of function and excessive costs. Under the State's structure, the Department of Fisheries is responsible for managing salmon while the Department of Game is responsible for steelhead. The costs of managing a single resource for the Department of Game would be substantially higher than the incremental costs of the Department of Fisheries for managing steelhead in addition to five species of salmon which share the same environment and have similar life histories.

MYTH: THE PROBLEMS OF STEELHEAD MANAGEMENT CAN BE SOLVED BY PRODUCING MORE STEELHEAD IN HATCHERIES

The burgeoning population and rapid industrial development that accompanied settlement of the Pacific Northwest has taken a severe toll upon the steelhead resource through the destruction of spawning and rearing habitat and increased fishing pressure. Today, the conflict between treaty and non-treaty interests has frequently been reduced to the simplistic notion that since there are too few fish for too many fishermen, the obvious solution is to build more hatcheries to produce more fish.

Such an approach represents well-intentioned political expediency because it avoids addressing the real problems confronting the resource. Throughout the initial period of development of the non-Indian fisheries for salmon and steelhead, industry, sportsmen and government had a cavalier attitude toward the resource, believing that their fisheries need not be regulated to preserve the resource because the natural runs of fish could easily be replaced by hatcheries. The blind faith that has been placed in hatchery production has been a principal factor responsible for continued careless exploitation.

While there are indeed many opportunities for enhancement to improve the health of both the resource and the fishery, it must be recognized that enhancement alone is not by any stretch of the imagination a panacea. In order to resolve the critical fundamental problems that confront the resource and all those who use it, enhancement must be considered as only a part of a comprehensive management scheme that provides for the protection of vital habitat, balanced production of hatchery and wild fish, and full regulation of all harvesting activity.

Passage of the Northwest Salmon and Steelhead Conservation and Enhancement Act of 1980 (PL96-561) established a mechanism through which these issues can be responsibly addressed by a cooperative, productive process involving tribal, state, and federal management entities. This Act authorizes the appropriation of \$14 million for steelhead enhancement, but only after all parties reach agreement on a comprehensive plan to coordinate management and enhancement efforts. In enacting this landmark legislation, Congress clearly recognized that enhancement alone could be no longterm answer to the difficult management problems of Northwest fisheries.

S2163 recognizes that enhancement in the absence of coordinated management will not resolve the problems confronting the fishery. Simply putting more fish in the rivers and in the ocean does not address the problems caused by having these resources managed by

almost thirty independent entities, each with the authority to establish catch limits, gear restriction, et cetera. Nor does producing more fish solve the question of how these fish are to be allocated between the various fishermen in order to insure that the Indian treaty rights are fulfilled.¹¹⁴

After so many years of increasing reliance upon hatcheries, significant problems have begun to emerge. Although there have been spectacular successes in hatchery production, there have also been dismal failures. Research has now revealed that uncontrolled hatchery production has tended to reduce the survival of wild fish, altered the genetic composition of resident populations, spread disease, and encouraged over-fishing.

For the steelhead in particular, ill-advised enhancement policies have had detrimental impacts upon both treaty and non-treaty interests. One example of how plantings of hatchery fish has led to the over-fishing of wild runs by sportsmen can be found in the enhancement practices of the Washington Department of Game. Prior to the court's decision in U.S. v. Washington, the Game Department followed a policy of planting large numbers of hatchery fish into streams to "encourage a sufficient level of sport fishing to utilize the resulting augmented run."¹¹⁵ Because hatchery stocks can generally sustain higher rates of exploitation than wild fish, sportsmen have been encouraged to harvest wild fish at excessively high rates. Hatchery fish also tend to be smaller and have less desirable fighting qualities important to sportsmen.

Another significant impact of improper hatchery practices by the Washington Department of Game is the shortening of sport fishing seasons. The principal hatchery stock of winter run steelhead planted by the State of Washington returns to the rivers during a two month period in December and January compared with the normal run timing of wild fish which extends over nearly a six-month period from November through April. The altered run timing of steelhead has also caused substantial harvest management problems for salmon fisheries in marine areas.

Since the decision of the court in U.S. v. Washington, the combined catch of treaty commercial and non-treaty sport fisheries has not declined from their historic levels. One reason cited by the Game Department for this fact is the alleged contribution of increased hatchery production of steelhead. Figure 11 depicts the history of hatchery planted steelhead in the U.S. v. Washington case area. Steelhead plants have been increasing steadily since 1950, but since the Boldt decision, releases into Puget Sound waters have remained relatively stable, while coastal releases (substantially by the coastal tribes, not the Washington Department of Game) have increased.

Figure 11: Hatchery Releases of Steelhead*

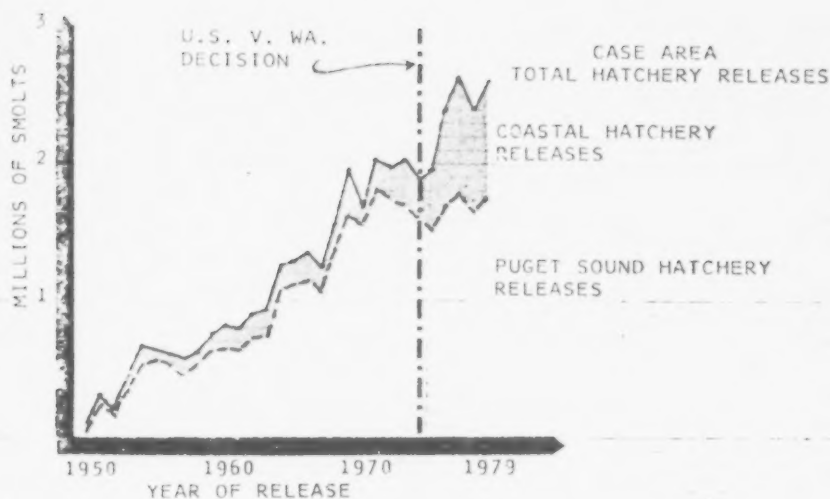


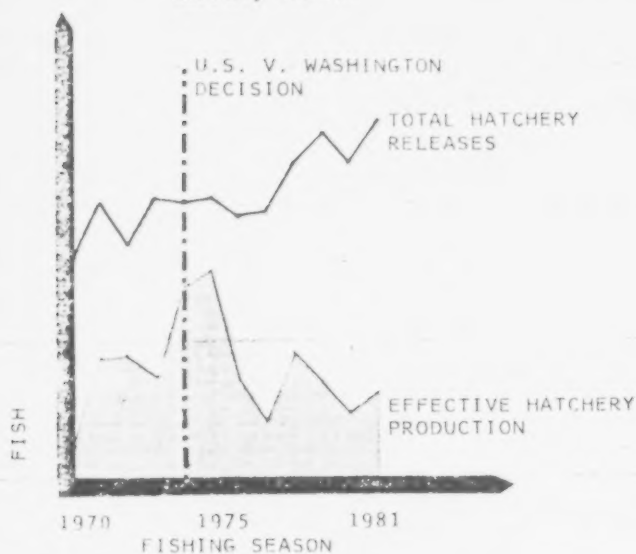
Figure 6. Hatchery Releases of Steelhead 102/

* See Footnote 115.

Increased or stable levels of hatchery steelhead releases by the Washington Game Department, however, have not sustained the harvest. The principal hatchery stock utilized by the Department of Game is from the Chambers Creek facility. In recent years, the survival of this stock has been decreasing substantially. The total contribution of Game Department steelhead to catches has been decreasing (Figure 12).

Not only have years of hatchery production using essentially a single genetic stock resulted in decreasing survival of hatchery fish, but the spawning of mature hatchery fish with wild fish has reduced the productivity of wild steelhead stocks as well. Research conducted in Oregon has demonstrated that hatchery fish and crosses between hatchery and wild fish do not survive as well as wild fish. Consequently, wild populations may have reduced productivities because of the contamination of genetically adapted stocks by the introduction of large numbers of hatchery fish introduced into the rivers by the Game Department.¹¹⁶

Figure 12.: Effective Contribution of Hatchery Produced Steelhead Resulting from Observed Decreases in Marine Survival of Chambers Creek Hatchery Stock.*



* See Footnote 117

Thus poorly planned enhancement of steelhead has had these major effects:

- *Encouraged the harvest of wild steelhead at excessively high rates
- *Altered the run timing of the species to shorten sport fishing seasons and create harvest management conflicts with certain species of salmon
- *Produced smaller, less desirable fish for harvest
- *Decreased the productivity of wild steelhead populations.

MYTH: THE STEELHEAD DECOMMERCIALIZATION BILL WOULD NOT ABROGATE INDIAN
TREATIES

The fatuous claims of the bill's proponents to the contrary, the so-called "Steelhead Trout Protection Act" contains several provisions that clearly and unequivocally abrogate the treaty fishing right for steelhead. The manner in which the abrogation would occur is not subtle. It is wholly insidious. The treaty right would be terminated first, then tribes would be forced to place a monetary value upon fishing for steelhead (something they have repeatedly stated cannot be valued in terms of dollars) in order to seek compensation through an expensive and lengthy process in the Court of Claims. A full legal analysis of the proposed legislation is attached to this report as Appendix A.

CONCLUSION

The controversy over Indian fishing for steelhead obeys no laws of reason. It is founded in the ill-defined and difficult realm of emotion spurred by elements of racism.

Eliminating Indian fishing for steelhead will not solve the problem for sportsmen. It would instead cause significant losses to treaty and non-treaty interests that depend upon protection of the resource and its environment. The decommercialization issue represents an ugly, divisive distraction that keeps Indians and sportsmen at each other's jugulars while the real problems threatening the resource environmental deterioration and mismanagement, are allowed to escape notice.¹¹⁸

Just a few short months ago, a new spirit of cooperation seemed to be emerging with the enactment of the Northwest Salmon and Steelhead Conservation and Enhancement Act of 1980. This landmark legislation was supported by a broad spectrum of interests because it provided a responsible mechanism through which the managers of the northwest's salmon and steelhead resources could work collectively and cooperatively to develop their own solutions to difficult and complex problems.¹¹⁹

The bill before you is not a solution in and of itself. It is a vehicle to deal with the problem. It is a vehicle that, to succeed, will require the earnest cooperation of often feuding factions within the region to develop - finally - a comprehensive management plan for fisheries...It is a vehicle that can, over the next decade, launch us on meaningful enhancement programs for both salmon and steelhead. It is a vehicle to deal with problems that are regional in impact but - ultimately - national in cause.¹²⁰

Solutions to the resolution of long-standing fishing problems in the Pacific Northwest were dealt a severe blow when the steelhead decommercialization bill was introduced into Congress. The once dying embers of conflict and controversy over Indian fishing have again begun to burst into a flame of hatred and bigotry that threatens to consume the last vestiges of hope of the resource.

In an April 2, 1981 letter to the Washington Congressional delegation, Joe DeLaCruz, President of the Quinault Indian Nation, stated:

...this landmark legislation provides a responsible means for Indian tribes and the State of Washington to resolve difficult problems. The cooperative and supportive attitude...so strongly in evidence this past week is a far cry from the conflict and

confrontation of only a few short months ago. Only with such a spirit can the issues of so vital concern to all the citizens of the Northwest be adequately addressed.

I am greatly disturbed over the potential negative impact of the steelhead decommercialization bill recently introduced by Senator Gorton and Representative Bonker along with some co-sponsors from the Washington and Oregon delegations upon the cooperative attitude which has recently begun to emerge. The deplorable political posturing of certain members of the delegation truly threatens to undermine the processes which only a few short days ago held so much promise.¹²¹

FOOTNOTES

1/ S. 874 and H.R. 2978

2/ John Cunningham (R-Washington) introduced the following three bills in the 1st Session of the 95th Congress (1977): Washington State Fishing and Hunting Equal Rights Act of 1977 (H.R. 9175); Steelhead Trout Protection Act (H.R. 9736); Native American Equal Opportunity Act (H.R. 9054). Don Bonker (D-Washington) introduced another bill entitled the Steelhead Protection Act (H.R. 6144) into the 96th Congress in 1979.

3/ See, e.g., the Indian Self Determination and Education Assistance Act of 1976, P.L. 93-638, proposed by a Republican Administration, enacted by a Democratic Congress, and reinforced by each succeeding Administration to the present. 25 U.S.C. 450:

450. Congressional findings

(a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that--

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that--

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

450a. Declaration of policy

(a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful

Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

4/ Kidwell, Dr. Clara Sue, 1980, a Helsinki Record: Native American Rights, a report prepared for the U.S. Helsinki Watch Committee, an organization created to monitor domestic and international compliance of the United States with the human rights provisions of the Helsinki Final Act. The Helsinki Agreement addresses the subject of Indian Fishing rights at pages 161-2 of the Final Act stating, "The government recognizes the right of these tribes to fish for commercial, as well as for ceremonial and subsistence purposes." (emphasis added).

5/ The State of Washington did attempt to prevent Indians from fishing for steelhead commercially on reservations in 1930, but was enjoined against doing so by the courts (Pioneer Packing v. Winslow, 159 Wash. 655).

6/ For a brief review of the lengthy history of conflict over Indian fishing rights in Washington, refer to: Uncommon Controversy, 1970, American Friends Service Committee, University of Washington Press; Volume I of the Tribal Report to the Presidential Task Force on Treaty Fishing Rights in the Northwest, 1977, Northwest Indian Fisheries Commission; Washington's Resistance to Treaty Indian Commercial Fishing: The Need for Judicial Apportionment, Schlosser, T.P., 1978, manuscript; A History of Treaty Fishing Rights in the Northwest, Smithsonian Magazine, Zientz, A., 1977.

7/ The treaties involved are: Treaty of Medicine Creek (10 Stat. 1132); Treaty of Point Elliott (12 Stat. 927); Treaty of Point No Point (12 Stat. 933); Treaty of Neah Bay (12 Stat. 939); Treaty with the Yakimas (12 Stat. 951); and Treaty of Olympia (12 Stat. 971).

8/ For additional history, see Johnson, R.W., 1972, The States Versus Indian Off-Reservation Fishing: A United States Supreme Court Error, Washington Law Review 47(2): 207-236; Schmidhauser, J.R., 1976, The Struggle for Cultural Survival: The Fishing Rights of the Treaty Tribes of the Pacific Northwest, Notre Dame Lawyer 52:30-40. In its 1979 decision the Supreme Court noted that the crucial treaty language was not the phrase "in common" but the "right of taking" fish. Washington v. Fishing Vessel Ass'n., 443 U.S. 658 at 678.

9/ Indians were not considered "citizens" of the United States until 1924. The law (8 U.S.C. 3) reads: "That all non-citizen Indians born or within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States; provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property." That provision already recognized that Indians had certain rights which other citizens did not possess. The State of

Washington unlawfully disenfranchised Indians for more than a decade after passage by Congress of a law giving Indians the right to vote.

10/ United States v. Winans, 198 U.S. 371 (1905); Seufert Brothers Co. v. United States, 249 U.S. 194 (1919); Tulee v. Washington, 315 U.S. 681 (1942); Puyallup Tribe v. Department of Game, "Puyallup I," 391 U.S. 689 (1968); Department of Game v. Puyallup Tribe, "Puyallup II," 414 U.S. 44 (1973); Puyallup Tribe v. Department of Game, "Puyallup III," 433 U.S. 165 (1977); Washington v. Fishing Vessel Ass'n, 443 U.S. 658 (1979).

11/ Senate Bill 81, declaring steelhead a state game fish, was enacted in 1926. Prior to that time, state fisheries legislation had defined "salmon" to include steelhead. U.S. v. Washington, *supra* at 383. Codified at Ch 178 W. Laws Ex Sess. 1925.

12/ During this period sportsmen had very powerful lobbies in the state legislature. When Initiative 62 failed to produce the results expected by sportsmen, the recreational fishers set about establishing sport fishing preserves in certain waters of the state through a second initiative, number 77. Initiative 77 was supported because the public at large was led to believe that a few dominant cannery operations were responsible for the continuous decline in the numbers of fish caught by sportsmen and commercial fishermen who operated independently. The effect of Initiative 77 was to eliminate by state law, fixed-location fisheries, such as traps, which had been developed and used by Indian fishermen for thousand of years. Yet, the traps were not to blame for the decline of the fish runs. In 1937, the director of the Washington Department of Fisheries reported (on chinook and coho salmon): "While depletion may have been temporarily checked, it is evident that the trollers and purse seine fishermen are still taking a serious toll of [sic] the fish outside the jurisdiction of the state, and that they, together with the sportsmen, are more responsible for the depletion of this species than were the fish traps." (Brennan, "Confidential Report", Martin Papers). Once again, the power of the sports lobby to place the blame on a politically vulnerable scapegoat was well in evidence.

13/ See Puyallup I, Puyallup II and Puyallup III, *supra*, n. 10.

14/ Alans, H., Who Is Don Bonker and Why are Sportsmen Saving All Those Nice Things About Him?, Washington State's Salmon and Steelhead Resources, Hearings before the Senate Committee on Commerce, Science and Transportation, 96th Congress, 2nd Session, on S 2163 on February 11 and 12, 1980, pages 200, 202-3.

15/ *Id.*

16/ Memorandum Re: Fishing Rights and Practices of Indian Tribes in Washington, dated May 2, 1940. Federal Archives and Records Center, Sandpoint, Seattle, Record Group 75, Bureau of Indian Affairs.

17/ Indian Tribes: A Continuing Quest for Survival, U.S. Commission on Civil Rights, June 1981.

18. Mundt, J. C. 1977. Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problem Concerning Authority, Function and Organization of Institutions Managing Salmon and Steelhead Fisheries Within Washington State.
19. Northwest Indian Fisheries Commission, *supra*, fn 5.
20. Fishing Vessel Association, 443 U.S. 658, 670-1.
21. Two examples serve to illustrate. During the 1930's, a Game Warden named E.M. Benn authored several letters for signature by Mr. A.T. Sandison of the Isaac Walton League charging Indians with various predatory acts upon the resource. These letters were responsible for the memorandum referenced in footnote 18. In 1977, the chief enforcement officer of the Washington Department of Game, W. Neubrech, co-authored a book entitled "Indian Treaties - American Nightmare" published by Outdoor Empire. It is frequently difficult to distinguish between the rhetoric of sportsmen and that espoused by the Department of Game.
22. Hearings on Indian Fishing Rights, Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 88th Congress 2nd Session, 1964. The hearings were conducted on two bills S.J. 170 and S.J. 171 which were introduced by Senator Magnuson at the request of some of his constituents. One bill would abrogate Indian treaty rights outright and pay compensation, the other would have subjected Indian fishing to state regulation accomplishing the same effect.
23. Indian Fishing Rights Hearing, *supra*, at 50-61.
24. Native American Solidarity Committee, 1978, To Fish in Common, p. 16.
25. *Id.*, at P. 17.
26. Seattle Post-Intelligencer, December 24, 1980, P. A2.
27. *Supra* U.S. Commission on Civil Rights, *supra*, pg. 72.
28. To Fish in Common, *supra*, P. 45.
29. Department of Game v. Puyallup Tribe, 70 Wn 2d. 249 n3.
30. Williams and Neubrech, 1977, Indian Treaties - American Nightmare, Outdoor Empire.
31. U.S. v. Washington, 384 F. Supp. 312,337.
32. *Id.* at 332.
33. Sohappy v. Smith, 302 F. Supp. 899, 908.

34. Passenger Vessel Association, 443 U. S. 658, at 675.
35. Id. n22.
36. Id. 676.
37. Id. at 680 and 683.
38. U.S. v. Washington, supra at 393
39. Id. at 342
40. Id. at 402
41. Id. at 333 and 388. See also Puyallup II, 414 U. S. 44, 45, 48. In an Oregon case involving Indian subsistence fishing, the federal courts for the first time examined the overall pattern of State regulation of anadromous fisheries and found that "conservation", by the State's definition meant reserving all the harvest for non-Indian sport and commercial fisheries and none at all for Indians despite their treaty rights (Maison v. Confederated Tribes of the Umatilla Indian Reservation, 314 F. 2d. 169)
42. Sohappy v. Smith, supra at 304 F. Supp. 899, 911.
43. U.S. v. Washington, 342 F. Supp. 312.
44. Id. 351.
45. Id. at 352.
46. Id. at 398.
47. Id. at 398.
48. Washington Department of Game, 1973, Progress Report dated June 30, 1978, Cooperative Agreement #14-16-0001-63-45 IFC between the USFWS and the Washington Department of Game.
49. Any possible cause/effect relationship between Indian fishing and decreased steelhead production would not in any case have become apparent until at least the 1978 season since the Skagit River steelhead are perpetuated on a four to five year cycle.
50. Ibid, footnote 48.

51. This pattern may be reflective of problems with the steelhead rearing facilities located on Barnaby Slough in the Skagit River system. The Barnaby facility has long been plagued by poor performance of its releases. The steelhead planted into the Samish River primarily come from the Game Department's facility located in Bellingham.
52. Royal, L.A., 1972. An Examination of the Anadromous Trout Program of the Washington State Game Department, unpublished manuscript, P. 115.
53. Lane, Bob. "Skagit River Stream flow - Management Plan Will Increase Fish Survival," Seattle Times, May 27, 1981.
54. Ibid at 120.
55. U.S. v. Washington, 384 F. Supp. 312, 334.
56. Id. at 387 and 358.
57. 94 S. Ct. 333.
58. Ibid n 26, at 338-9.
59. Hearings on Indian Fishing Rights (S.J. 170 and S.J. 171) before the subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, United States Senate, 88th Congress, Second Session August 5 and 6, 1964.
60. Meigs, R., Washington Department of Game Internal Newsletter, April 1961.
61. Hunting and Fishing News, June 18, 1981, Sport Steelhead Lobby Needs Help. Page 27.
62. Durbin, C. Future Salmon, Future Steelhead, Trout 22(1):33. It is interesting to note that the picture leading the article is of a steelhead taken from the Hoh River, a river which has had a commercial steelhead Indian net fishery at its mouth for centuries.
63. U.S. v. Washington, 384 F. Supp. 312, 398.
64. Sohappy v. Smith, 302 F. Supp. 899, 911.
65. Washington Department of Game, Progress Report June 30, 1978, concerning Cooperative Agreement #14-16-0001-6345 IFC with the U.S. Fish and Wildlife Service.

66. The sport catch statistics may reflect an undetermined reporting bias due to sportsmen who refused to record catches in protest of the court's decision in U.S. v. Washington.
67. All catch statistics obtained from the Washington Department of Game catch summaries published annually.
68. *Id.*
69. For several years, there has been a problem with non-Indians catching and selling steelhead by using falsified identifications or simply giving fictitious names claiming to be members of treaty tribes (see article entitled Fishermen Urged to Report Steelhead Gillnet Sightings by Brad O'Connor, Seattle Times, February 13, 1981, for an example). The first conviction of a non-Indian impersonating an Indian for the purpose of selling steelhead occurred in December 1980 in a case State v. Price, 94 Wa. 2d. 810. In addition, since the enactment of the State's steelhead decommercialization statute, an undetermined quantity of steelhead are caught and sold by non-Indian fishermen who take the fish as an incidental harvest. The Game Department has not estimated the magnitude of the problem, making the unwarranted assumption that if no catch is reported, it must be zero. (For a brief discussion of the incidental steelhead harvest on the Columbia River, see Bakke, W., 1981, The Columbia River: Dammed Giant, Trout Magazine 22(1):40-49). While some sportsmen might be inclined to argue that Indian fishing rights enable certain non-Indians to avoid compliance with state decommercialization laws, the fundamental question must still be asked, as to whether Indian rights should be abrogated because the State is apparently incapable of enforcing its own laws against non-Indians.
70. U.S. v. Washington, 384 F. Supp. 312, 334.
71. *Id.* at 358
72. *Id.* at 302
73. There was no estimate of the sport catch of steelhead prior to 1948. In that year, a compulsory punch card system was introduced as a means of estimating the winter run steelhead catch. In 1962, the punch card system was revised to include the catch of summer run fish. (Meyer, J., 1977, Steelhead: Report To The Regional Task Force On Northwest Fisheries Problems, U.S. Fish and Wildlife Service, Fisheries Assistance Office, Olympia.) Fewer than 30% of the punch cards issued are actually returned and considerable discussion concerning the accuracy of

estimated catch statistics derived through the use of punch card data has occurred among sportsmen, tribal fisheries managers and Game Department officials. In the 1980-81 season, the South King County Chapter of the Northwest Steelheaders and three other sportsmen's clubs, believing that the procedures employed by the Game Department overestimated the sport catch, conducted their own creel census on a ten mile stretch of the Green River (See article by Brad O'Connor, Results Surprising as Anglers Challenge Catch Figures, Seattle Times, March 5, 1981). Much to the sportsmen's surprise and chagrin, the results indicated that the Game Department had underestimated the sport fishing effort and catch by approximately 100% for "drift" anglers and over 30% for "plunkers". (Letter to Fred Olney from Washington Department of Game, dated May 4, 1981.)

74. For example, see editorial by Amato, A Big Loss, Salmon, Trout Steelheader Magazine 14(5):3.
75. "Fishing With Responsibility", by Jerry Pavletich, Aberdeen Daily World, March 23, 1980.
76. Letter to Jerry Pavletich from Joseph DeLaCruz, March 31, 1980.
77. Congressional Record, April 2, 1981 S3386.
78. Derived from punch card statistics and Indian catch records as Reported by the Washington Department of Game.
79. Memorandum to All Treaty Tribes from the Washington Department of Game concerning 1979-80 Winter-Run Steelhead Predictions, dated September 10, 1979.
80. Pre-season Management Report for Steelhead Returning to the Queets, Quinault, Raft, and Grays Harbor Rivers in Winter 1980-81, Quinault Department of Natural Resources Fisheries Division, December 1980.
81. Because of the lack of sufficient information on past spawning escapement levels and resulting resource production, the number of harvestable steelhead is normally determined on the basis of some historical catch level. (See procedure outlined in memorandum referred to in footnote 79.) Since treaty fisheries had historically taken well over 50% of the catch, the effect of this procedure is to reduce the number of steelhead which can be taken by Indian fishers.
82. Passenger Vessel Association, 443 U.S. 658, _____.

83. Order on Certain Questions RE: Steelhead Fisheries Management, dated September 14, 1976.
84. U.S. v. Washington, 384 F. Supp. 312, 399.
85. Personal communication with Jack Savage of the U.S. Fish and Wildlife Service in Portland, June 24, 1981. Dingell-Johnson funds are used to provide funding for steelhead facilities at Harrison-Barnaby and Whitehorse plus a research project on the Sauk River. (Personal communication with Tom Williams of the U.S.F.W.S., June 24, 1981.)
86. Carlisle, H.M., 1979, Final Report to the Funding Support of Anadromous Fisheries in the area of Western Washington Associated with the case of United States of America, et. al., Plaintiffs v. State of Washington, et. al. Defendants, Phase II (Civil No. 9213, WD Wn.), dated October 1, 1979. The sources of funds used for capital construction was identified as follows: 100% State funded = 22%; Dingell-Johnson (25% match) = 1%; Anadromous Fish Act (50% match) = 2%; Public and Private Utility mitigation = 46%; federal mitigation = 28%.
87. For example, see article titled Steelhead: Cuts Endanger Program, by Brad O'Connor, Seattle Times, May 3, 1981. The Federal Courts have determined that treaty tribes are entitled to harvest 50% of the hatchery fish as well as wild fish (U.S. v. Washington Phase II Opinion, 506 F. Supp. 187). The extent to which steelhead have been used as mitigation or replacement of salmon resources lost has not been determined.
88. 10 Year Comparison of License Sales Calendar Years 1970-79, prepared by The Washington Department of Game for the State Legislature deliberations concerning 1981-83 Budget Requests.
89. Evidently, inflation has hit the steelhead sports fishing market. In 1974, the court found that:

As one basis for its conclusion that a hook and line fishery is the wisest use of the steelhead resource, The Game Department relies on a study which concluded that a steelhead fisherman contributes approximately \$60 in general benefit to the economy of the State of Washington for each fish caught (U.S. v. Washington, 384 F. Supp. 312, 399).
90. Passenger Vessel Association, 442 U. S. 658, 678.

91. U.S. v. Washington, 384, F. Supp. 312, 350.
92. Id. 340.
93. Id. 404.
94. Petry, G.H., L.L. Blakeslee, W.R. Butcher, R.J. Fuller, and S.K. Staitieh, 1980, Pacific Northwest Salmon and Steelhead Fishery Report, Volume II, The Economic and Employment Impacts of Commercial and Sport Fishing for Salmon and Steelhead in the Pacific Northwest, College of Business Economics, Washington State University.
95. The relationship between regulation of salmon and steelhead fisheries is critical to understanding the economic contribution of steelhead to Indian communities. (For example, see Novak, J., A Look at Steelhead From the Indian Side, Salmon Trout Steelheader 12(2), 1978 and What Steelhead are Worth to Indian Fishermen, Salmon Trout Steelheader, Dec. 78 - Jan. 79 issue.) This interdependence has also been recognized by officials within the Department of Game.

The Department has to accept the fact that the tribes are going to enhance steelhead. Salmon species such as kings and silvers have low returns, due to interception problems, and steelhead are providing the only source of income to many of the tribes (emphasis added).

Memorandum Re Tribal Steelhead Enhancement, to Jack Ayerst, Fish Management Division Administrator from Garry Garrison, Indian Affairs Administrator, Washington Department of Game, dated March 3, 1981.

96. Oliver, W.H., C. Young, and D.R. Eldred, 1975, A Short Form for Bioeconomic Evaluations of Wildlife in Washington State, prepared for the Washington Game Commission.
97. Approximately 300,000 sportsmen obtained annual permits to fish for salmon as compared to the approximately 100,000 sportsmen who purchased annual permits to catch steelhead.
98. Recreational Fisheries Analysis: Management Modes and Benefit Implications, Canadian Journal of Fisheries and Aquatic Science, 38:559-570.
99. Brown, W.G., C. Sorhus, and K.C. Gibbs, 1980, Estimated Expenditures by Sport Anglers and Net Economic Values of Salmon and Steelhead for

Specified Fisheries in the Pacific Northwest, Department of Agricultural and Resource Economics, Oregon State University, Corvallis.

100. Marasco, R. and E. Anderson, The Washington Salmon Fisheries: An Economic Profile, National Marine Fisheries Service, Montlake Laboratory, 1977.
101. Ayerst, J., 1981, Meet the Northwest's Trophy Trout, Trout22(1).
102. Copes, P. & J.L. Knetsch, 1981, Recreational Fisheries Analysis: Management Models and Benefit Implications, Canadian Journal of Fisheries and Aquatic Science, 38:559-570.
103. Smith, C., 1980, Attitudes About the Value of Steelhead and Salmon Angling, Transactions of the American Fisheries Society 109:272-281
104. To a commercial fisherman, fishing has "value" other than the income received from the sale of fish. The ability to participate in the fishery, to be enjoying a preferred occupation is of importance. As an eminent example, consider the salmon fishery, especially the trolling industry. The troll fishery has not been one based on the economics of fishing alone; for the vast majority of trollers, fishing income is not sufficient to cover expenses. Individuals are involved in the fishery for other reasons, such as pleasure or tax advantages. Therefore, the first few fish taken by commercial fishers has a "value" albeit not an economic one. To determine the total value of a commercially caught steelhead in terms comparable to those employed to place a value on a sport caught fish, the enjoyment value of a fisherman for being able to pursue his preferred occupation must be added to the money revenue received for his catch. For treaty fishermen, this value is immeasurable.
105. Barsh, R., 1981, personal communication.
106. U.S. v. Washington, 284 F. Supp. 312, 374.
107. Id. at 375.
108. In some respects, the history of license and steelhead punch card sales in the State of Washington supports the premise that the value of the steelhead recreational experience is apparently very small for a substantial number of sportsmen. For example, when the punch card fee was raised a single dollar from \$2 to \$3 in 1976, sales dropped by some

43,000. One interpretation of this is that 35% of the steelhead sports fishermen did not value the recreational experience of steelheading enough to pay one dollar more. "The onus of demonstrating superior value in sport fishing would seem to lie with those desiring a changed allocation, and this would appear to suggest the willingness to pay measure." (see reference in footnote 102).

109. U.S. v. Washington, 384 F. Supp. 312, 397.
110. Id. at 397.
111. To Fish in Common, Fn. 24. See also testimony of Dr. Richard Whitney (P. 149), Dr. Peter Bergman (P. 196), and Dr. Jack Ayerst (P. 235), during the hearings on Salmon and Steelhead Stocks before the Committee on Commerce Science, and Transportation, United States Senate, 96th Congress, First Session, May 16 and 17, 1979.
112. Contract number 14-16-001-6345-1FC as amended.
113. Budget Requests for the Boldt Case Area, FY-1982 and FY-1983, Prepared January 1, 1981 by the Washington Department of Game.
114. Statement of Mr. Forsythe in support of S2163, Congressional Record, December 4, 1980, page H12011.
115. Data extracted from W. Waknitz, C. Mahnken, and J. Meyer, 1977. Salmon and Steelhead Production (Hatchery and Wild) from Boldt Case Area River Basins from 1952-1976. Report to the Regional Task Force of the Presidential Task Force on Northwest Fishing Problems; and, from 1979-80 and 1980-1981, Winter Run Steelhead Predictions Prepared by the Washington Game Department.
116. Id.
117. Seisenbichler, R.R., and J.D. McIntyre, 1977. Genetic Differences in Growth and Survival of Juvenile Hatchery and Wild Steelhead Trout, Salmo gairdneri. Journal of Fisheries Research Board of Canada 34:123-128.
118. Deterioration of the environment and uncontrolled exploitation of the resource by sportsmen have been responsible for a reduction of steelhead below historic levels of abundance. Since 1962, the watersheds of the Boldt case area have lost 24% of their capacity to support steelhead according to a letter addressed to Jim Waldo and Lee

Alverson of the Regional Task Force on Northwest Fishing Problems from Wally Miller dated February 9, 1978,

119. The legislative approach was remarkable consistent with the recommendations of the U.S. Civil Rights Commission in its recently published report, Indian Tribes: A Continuing Quest for Survival.
120. Statement of Mr. Swift, Congressman from Washington, in support of S2163, Congressional Record, December 4, 1980, page H12014.
121. See also Senator Debates Indians on Steelhead Issue, Seattle Post Intelligencer, July 10, 1981.

APPENDIX A

A PRELIMINARY LEGAL ANALYSIS OF
 THE PROPOSED "STEELHEAD TROUT
 PROTECTION ACT"^{1/}

INTRODUCTION

The Gorton/Bonker steelhead decommercialization bill is the most recent attempt by Washington State representatives to abrogate Indian treaty fishing rights. 2/The bill would abrogate treaty rights in the state's steelhead fishery to provide Washington State sportsmen increased recreational opportunities.

1/ The title of the proposed bill is clearly a misnomer. It may have been intended to suggest that some legitimate steelhead conservation concern prompted its drafting. But, the outlawing of traditional and treaty guaranteed Indian steelhead fishing activities is not a measure necessary for the perpetuation of steelhead runs. Under current law, state regulation of Indian steelhead fishing for legitimate and necessary conservation purposes is permissible. However, the bill's Findings make no attempt to justify this legislation under the guidelines controlling enforcement of steelhead "protection" measures against treaty fishermen. See Puyallup Tribe v. Department of Game, 391 U.S. 392, 398 (1968); United States v. Washington, 384 F.Supp. 312, 342, 401-402 (1974); Sohappy v. Smith, 302 F.Supp. 899, 908-909 (D.Or. 1969). The state's determination of the best and wisest use of steelhead cannot preempt the tribes' right to determine the wisest use of its treaty share. Id. It would be more appropriate to call the bill the "Washington State Sportsmen Protection Act," for steelhead trout are not endangered by treaty fishing and there is no conservation necessity requiring this sort of protection. See United States v. Washington, 384 F.Supp. at 388, n.26, 393 FF# 221, 398 FF# 244, 246, 247; Sohappy v. Smith, 302 F.Supp. at 911.

2/ Three times, in the early 1960's, Congress rejected efforts to terminate treaty fishing rights. See S.J. Res. 170 and 171, 88th Cong. 2d Sess. (1964); H.J. Res. 48, 88th Cong., 1st Sess. (1963); H.J. Res. 698, 87th Cong. 2d Sess. (1962); cf. Washington v. Fishing Vessel Association, 443 U.S. 658, 693, n.33 (1979). Similar and more recent efforts to have Congress breach its Indian treaty commitments have also failed. See e.g. Representative Cunningham's bill to abrogate all Indian treaty rights introduced in the 95th Congress. H.R. 9054, September 12, 1977.

Tribal fishermen who have traditionally depended on steelhead runs for economic, subsistence, and ceremonial needs could no longer do so. By making all state steelhead laws applicable to treaty fishermen, the bill would limit Indian fishermen to the highly inefficient hook and line fishery. Indians would be forced to compete for their steelhead supply with a far greater number of non-Indian sportsmen who earn their livelihood by other means.

This memorandum explores the legal ramifications in passing this bill. The memorandum addresses the questions of whether an abrogation of treaty rights would occur, whether this legislation would exceed Congressional authority and violate any constitutional guarantees, whether the bill would result in substantial monetary claims against the United States, and finally, whether the bill is likely to resolve fishing controversies in Washington State.

SUMMARY

In light of Supreme Court interpretations of the treaty fishing provisions, the bill is undoubtedly an abrogation of treaty fishing rights. It would legislate into the current management of Indian/non-Indian steelhead fisheries the old, misleading, and discarded concept of "equal opportunity". The United States Supreme Court has repeatedly rejected the appropriateness of that concept as a fisheries management principle, because it violates the treaty guarantee that Indians will be allowed to continue to satisfy their livelihood needs through fishing.

In spite of the broad powers of Congress in Indian affairs, it is questionable whether this bill would be constitutional. Rather than achieving its objective, it is likely to generate challenges to its validity. And, this legislation would undoubtedly generate claims against the United States government for huge sums of compensation for a Fifth Amendment taking of property rights.

Rather than resolving fishing controversies, this legislation would interfere with the post-Supreme Court decision healing process that is well under way. It would also undermine implementation of the Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 95-561, which Congress recently enacted as a mechanism for increasing tribal/state cooperation on fisheries matters while preserving Indian treaty commitments.

KEY PROVISIONS OF THE BILL

1. Section 2 of the bill declares U.S. treaty obligations and Indian commercial, subsistence, cultural, and religious dependence on steelhead of lesser value than recreational interests of sportfishermen and state revenue from sport licensing fees. The bill declares that Indians "may" find greater commercial value in only being able to license non-Indian sportfishermen on their trust lands and reservation waters, rather than being able to make full use of steelhead harvests in all their usual and accustomed fishing areas.

2. Section 3 enlarges state authority over Indian steelhead fishing from the power to regulate for a conservation necessity to the power to enforce all state steelhead fishing laws against treaty Indians, including the prohibition on net commercial fisheries. cf. United States v. Washington, 384 F.Supp. at 393 FF #221. This expansion of state authority applies to Indians both on and off reservations, except that the state may choose to enter written agreements with tribes allowing separate regulations for taking and possession of steelhead by Indians on reservations. Tribal consent to this increase in state jurisdiction is not required, notwithstanding the existing consent requirements of federal law.

3. Section 4 provides for tribal licensing of steelhead fishermen on the tribe's trust lands or reservation waters. It should not be presumed that this is a grant of some "new" power. See, e.g., United States v. Pollman, 364 F.Supp. 995 (D.Mont. 1973); Moore v. U.S., 157 F.2d 760 (9th Cir. 1946); J.S. v. Stotts, 49 F.2d 619 (W.D.Wash. 1930; United States v. Romaine, 255 F. 253 (9th Cir. 1919); United States v. Washington, 384 F.Supp. at 322 and n.12; Washington v. Fishing Vessel Ass'n, 443 U.S. 658, 687 (1979). Furthermore, tribal licensing conditions are to be in addition to state licensing requirements, except that the existing immunity of tribal fishers from state licensing is preserved. The issue of whether the state presently can license non-Indian fishers on trust lands or reservation waters, who are licensed by the tribe, is still unresolved. See, White Mountain Apache Tribe v. State of Arizona, etc., Nos. 78-3427, 79-4294 (9th Cir. April 6, 1981); Eastern Band of Cherokee Indians v. North Carolina Wildlife Commission, 588 F.2d 75 (4th Cir. 1978); U.S. cert.dis. 446 U.S. 960.

4. Section 5 amends the Black Bass Act, 16 U.S.C. 851, et seq., to include steelhead in its prohibition of interstate commerce in certain fish.

5. Section 3(c) declares any conflicting treaty rights terminated or modified and provides for the Court of Claims to hear tribal "taking" claims for compensation. There would be a three year statute of limitations and a set off against

monetary awards to tribes for the value of their licensing authority over steelhead sportsfishermen. One effect of this provision is to cut in half the current six year statute of limitations for "taking" claims. See 28 U.S.C. 1505, 2501; United States v. Mitchell, 443 U.S. 535, n.2 (1980).

ANALYSIS

I. The Treaty Fishing Right Includes The Right To Net Steelhead For Commercial Purposes Free From State Jurisdiction, Except As Necessary For Conservation/ The Moderate Living Standard Cannot Serve To Selectively Eliminate Indian Commerce In A Particular Species Of Fish

In introducing his steelhead decommercialization bill, Senator Gorton simultaneously issued a statement that:

...I do not believe that a taking of any treaty right results from this bill. As the U.S. Supreme Court clearly pointed out, the tribes' treaty right is only for that quantity of anadromous fish that will provide them with a "moderate standard of living." This bill does not affect the tribes rights to commercially harvest the far more abundant salmon resource or affect their ability to obtain a moderate standard of living from their treaty share of salmon.

It is important, at the outset, to make clear that this is a very serious misinterpretation of the treaty fishing right, as construed by the Supreme Court. Two points should be emphasized.

First, the Supreme Court has specifically and repeatedly held that there is a treaty right to net fish for steelhead trout, for commercial purposes.

In Department of Game v. Puyallup Tribe, the Supreme Court said in regard to steelhead fishing:

Our prior decision [referring to a 1968 decision] recognized that net fishing by these Indians for commercial purposes was covered by the Treaty, 391 U.S. 398-399.

414 U.S. 44, 48 (1973). The Court ordered that steelhead net fishing be allowed and that steelhead runs be apportioned be-

tween non-Indian sportsmen and Indian fishermen. The Supreme Court also held that a ban on all Indian net fishing, while hook and line fishing was allowed, was unlawful discrimination against Indian fishermen. See also, U.S. v. Washington, 384 F.Supp. at 403-404 C.L. 39.

Four years later, the Supreme Court again noted that
...a complete ban on net fishing for steelhead trout by the Indians was precluded by the treaty.

Puyallup Tribe v. Department of Game, 433 U.S. 165, 167 n.1 (1977).

Furthermore, the court held that this treaty right to steelhead fishing included the right to be free from state jurisdiction and laws except as shown necessary for conservation. Puyallup Tribe v. Department of Game, 391 U.S. 392, 395, 398 (1968).

In substantially affirming the lower court interpretation of the treaty fishing right in United States v. Washington, the Supreme Court noted that

...the State of Washington has attempted to reserve one species, steelhead trout, for sport fishing...

Washington v. Fishing Vessel Assn., 443 U.S. 658, 663 (1979).

The Court noted that, historically, steelhead trout were important to tribes, 443 U.S. at 665, and held that

...the purpose and language of the treaties are unambiguous; they secure the Indians' right to take a share of each run of fish that passes through tribal fishing areas.

443 U.S. at 679 (emphasis supplied). Relying on the Puyallup litigation for this proposition, the Court said:

...the Court in the context of a dispute over rights to the run of steelhead trout on the Puyallup River reaffirmed both of the holdings that may be drawn from Winans -- the treaty guarantees the Indians more than simply the "equal opportunity" along with all of the citizens of the State to catch fish, and it in fact assures them some portion of each relevant run.

443 U.S. at 681-682. It went on to note that

...Although under the challenged regulation every individual fisherman would have had an equal opportunity to use a hook and line to land the steelhead, most of the fish would obviously have been caught by the 145,000 nontreaty licenses rather than by the handful of treaty fishermen. The Court vindicated the Indians' treaty right to "take fish" by invalidating the ban on net fishing...

443 U.S. at 683; see also pp.676-677 and n.22.

There should be no doubt that the treaty fishing right includes a right to take a fair share of steelhead trout by net fishing.

The second point is that the moderate living standard cannot serve to limit the type of fish which tribes can harvest. The moderate living standard only applies to the quantity of each fish run which tribes can harvest. It is to be used to determine their "fair share" of each run, not whether a particular run can be harvested at all. The only application of a moderate living standard which the Supreme Court approved was to

...initially divide the harvestable portion of each run that passes through a "usual and accustomed" place into approximately equal treaty and nontreaty shares, and... then reduce the treaty share if tribal needs may be satisfied by a lesser amount.

443 U.S. at 685; see also *United States v. Washington*, 384 F.Supp. at 342-344. In his statement accompanying the bill, p.4, Senator Gorton recognized that the moderate living standard limited the "quantity" of anadromous fish which tribes could harvest. He then, however, left to the conclusion that Congress, in the absence of any conservation necessity, could decide for tribes which of the various fish runs they can rely upon to meet their future moderate living needs, without abrogating their treaty right.

The treaty right includes the exclusive right of each tribe to determine which runs its members may fish upon, absent a conservation necessity. As held by the district court, the power to regulate for conservation purposes

...does not include the power to determine for the Indian tribes what is the wisest and best use of their share of the common resource.

United States v. Washington, 384 F.Supp. at 402 ; cf. 384 F.Supp. at 394, FF #222. 1/

II. The Bill May Exceed Congressional Authority

Courts have generally accepted the notion that Congress may unilaterally breach, or "abrogate," the terms of an Indian treaty. But courts have also become less deferent to the discretion of Congress in affecting Indian treaty rights. While the abrogation of Indian treaty rights was once viewed as purely a "political" question, beyond the scope of judicial review, the Supreme Court has, in modern times, taken a more protective view and has scrutinized Congressional actions affecting Indian property interests for compliance with the constitution. See United States v. Sioux Nation of Indians, ___ U.S. ___, 100 S.Ct. 2716, 65 L.Ed. 2d 844, 874-875 (1980).

The Fifth Amendment authorizes the United States to take private property for a public purpose, so long as just compensation is provided. The Supreme Court has enforced this just compensation requirement when tribes have established a Fifth Amendment taking of their property. See United States v. Klamath and Moadac Tribes, 304 U.S. 119, 123 (1937); Shoshone Tribe v. United States, 299 U.S. 476, 497 (1937); United States v. Southern Pacific Transportation Co., 543 F.2d 676, 686 (9th Cir. 1976). Treaty fishing rights also require just compensation, if abrogated. Menominee Tribe v. United States, 391 U.S. 404, 407, 413 (1968). But, the limits imposed by the "public purpose" requirement, in the context of United States/tribal relations, are as yet less clear. The United States' power to appropriate

1/ Even if the moderate living standard could be applied to limit the type of fish which tribes are entitled to harvest, there is little likelihood that it could be demonstrated that steelhead net harvest exceeds the tribes' moderate living needs. Aside from the fact that even after Washington tribes were harvesting close to 50% of each harvestable run the degree of poverty among Indians in Washington State remains startling, The Relationship Between Washington and Its Reservation-Based Tribes, August 1978, pp. 24-44, see also United States v. Washington, 506 F.Supp. 187, 208 (1980)), steelhead runs are unique in that they supply a winter fishery for a number of tribes. By lessening the adverse impacts of an economy and culture dependent on a seasonal industry, steelhead commercial and subsistence fishing plays a highly significant role in diminishing Indian dependence on public assistance and in promoting Indian economic self-sufficiency. The social costs, as well as the cultural and religious importance (cf. 443 U.S. at 665 and notes 6 and 7) of steelhead fishing, also cannot be ignored in evaluating tribal living needs.

Indian property interests guaranteed by treaty and important to tribal self-sufficiency and cultural preservation would seem to require far more compelling circumstances and consideration of treaty obligations than are apparent in this bill.

Even during the early years, when courts gave total deference to a Congressional decision to abrogate, the Supreme Court suggested limitations on the circumstances under which the power should be exercised:

The power exists to abrogate the provision of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians.

Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903); see also Shoshone v. United States, 299 U.S. at 497; Federal Power Com. v. Tuscarora Indian Nation, 362 U.S. 99, 124 (1960).

There is also more recent precedent for arguing that the application of Fifth Amendment protections to Indians requires special consideration of the United States' unique Indian guardianship responsibilities. In examining whether certain federal Indian legislation violated a tribe's right to equal protection, the Supreme Court analyzed the statute to determine if it

... 'can be tied rationally to the fulfillment of Congress' unique obligation toward Indians...'

Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73, 84-85 (1976).

It is true that, in determining whether Indian property has been "taken," courts have viewed the United States as capable of wearing two hats, one as a guardian acting in the best interests of Indian people, and the other, as an appropriator of Indian property with other interests in mind. The latter "hat" requires just compensation. See United States v. Sioux Nation of Indians, 65 L.Ed 2d at 844, 871, 876. But this split personality concept arises in cases where the taking was a

"fait accompli." In those cases, tribes were not challenging the power of Congress to have done what it did, but rather were claiming compensation for past wrongs. The Supreme Court appears to have left open the possibility that a tribe could challenge the constitutionality of a Congressional decision to abrogate a particular treaty right. *Id.* n.27 and 28. While the two hats theory may serve well to redress past wrongs, it seems inappropriate in evaluating the constitutionality of recent Indian legislation, particularly in view of modern day notions of federal responsibilities towards Indians. See Seminole Nation v. United States, 316 U.S. 286, 296-297 (1941); Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252, 256 (D.D.C. 1973); United States v. Mason, 412 U.S. 391, 398 (1973); see also Chambers, "Judicial Enforcement of the Federal Trust Responsibility to Indians," 27 *Standard Law Review* 1213, 1228-1230 (1975); United States v. Mitchell, 445 U.S. 535, n.7.

The proposed bill would offer a particularly compelling set of facts in which to test the limits of the abrogation power. Here, the United States has, in its capacity as trustee, spent large sums of money and time vindicating the Stevens treaty fishing rights, and protecting those rights from the very same incursions the bill proposes. It has successfully argued in court that application of a ban on net steelhead commercial fishing to treaty Indians illegally discriminates against Indians by placing them at a substantial disadvantage in harvesting the fish they need. See United States v. Washington, 384 F.Supp. at 399 #251, 403-404 #39; Washington Game Department v. Puyallup Tribe, 414 U.S. at 44, 46-57. Congress, moreover, just recently provided a mechanism for the tribes and state to cooperate in dealing with fishery concerns, and to increase the supply of steelhead for the benefit of both treaty fishers and sports-fishermen, rather than usurp Indian treaty rights. That legislation repeatedly affirms Congress' intent to preserve without limit the tribes' treaty fishing rights. See Salmon and Steelhead Conservation and Enhancement Act of 1980, PL 96-561. The Act is still in the early implementation stages. A sudden decision to abandon this approach in regards to steelhead would be very difficult for Congress to justify, under the most generous rational basis test.

In any event, the tribes should at least be entitled to the same requirement of "public purpose" as is generally afforded others in regard to Fifth Amendment takings of their property interests. Although the Congressional condemnation power is broad, a number of cases have held that simply increasing public fishing or hunting opportunities is not a "public purpose," justifying condemnation. See Peavy-Wilson Lumber Co. v. Brevard County, 172 ALR 168, 31 S.2d 483 (Fla.S.Ct. 1947); Swan Lake Hunting Club v. United States, 381 F.2d 238, 241, 245 (5th Cir. 1967). It should also be noted that the bill may actually

have detrimental effects on sportfishermen in terms of the loss of tribal steelhead data and management expertise, to say nothing of the loss of benefits from the treaty right to have the steelhead habitat protected from environmental degradation. cf. United States v. Washington, 506 F.Supp. 187 (1980).

III. If The Bill Becomes Law And Is Upheld As A Valid Exercise of Congressional Power, Substantial Questions Regarding Compensation Will Have To Be Litigated

While no court has specifically addressed the question of whether Stevens treaty fishing rights may be abrogated to benefit a group of steelhead sportfishermen, the tribes' entitlement to just compensation for an abrogation is clear. See Menominee Tribe v. United States, *supra*. Determining the amount of "just compensation," however, may prove difficult.

There is little, if any, precedent for how to place a monetary value on Indian fishing rights. In one case, a method was proposed, but the court did not have to reach the value question because it found no taking. The method proposed was a complicated one comparing the profitability of the fish processing industry to the yield of alternative capital investment in industries with comparable risks. See Tlingit and Haida Indians of Alaska v. United States, 389 F.2d 778, 784-785 (Ct.Cl. 1968).

In Whitefoot v. United States, the tribes and Army Corps of Engineers had agreed to capitalize, at 3%, the total value of fish harvested by the tribes on a stretch of the Columbia and sold commercially, sold to tourists, or used for subsistence. The calculated value for a ten mile stretch of river amounted to \$26,888,395.32. See 293 F.2d 658, 155 Ct.Cl. 127 (Ct.Cl. 1961).

Here, the affected stretches of river are far more extensive. Tribal enterprises, such as processing plants, retail outlets, and seafood restaurants, may also be adversely impacted. The issues that come into play in trying to devise an appropriate measure of just compensation are bountiful. Establishing "adequate" compensation may well be impossible because of the uniqueness of the rights involved. See United States v. Washington, 384 F.Supp. at 406-407, 404 CL 46.

Furthermore, the proposed "set off" for the value to tribes in retaining some licensing authority will undoubtedly require substantial litigation, as well. Tribal licensing of non-Indian steelhead fishermen on reservation waters is not a new phenomenon in Washington State. It is not a new right for which tribes will be willing to pay in the form of some set off against their damage claims. The bill's authorization for two sets of licensing requirements (state, as well as tribal) may actually create additional damages through a loss in revenue for those tribes, who find it economically unfeasible to impose double licensing. cf. White Mountain Apache Tribe v. State of Arizona, etc., *supra*:

Eastern Band of Cherokee Indians v. North Carolina, supra.

In short, the bill's proponents unfortunately seem bent upon generating more litigation over treaty fishing rights. Whatever the ultimate determination of these issues, there will be tremendous costs not only in the form of compensation to tribes but also in resolving the many legal questions raised by the bill.

CONCLUSION

This is not the first time members of Congress have been asked to consider limiting the treaty rights of Indians because of complaints by Washington State sportsfishermen. In 1940, the Taholah Agency Superintendent reported to the Commissioner of Indian Affairs on a similar controversy:

By reason of the controversy that has extended over the past five years over fishing rights claimed by the Indians on the one hand and the State Game Officers and Sportsmen Clubs on the other hand, a lot of animosity has arisen against the Indians, especially recently, because of the attempts through legal means to establish their claimed Treaty Fishing Rights. Some of the so-called Sportsmen Clubs and their spokesmen, such as E.M. Benn and others, claiming to represent such clubs, have been indulging in false and misleading propaganda against the Indians, the Indian Department and Officers of this Agency with the evident purpose of creating discredit and bias and to attempt to place restraint against the Indians and the Indian Officers in order to prevent them from successfully prosecuting to a judicial determination the lawful rights claimed by the Indians under their Treaties and the Laws of this State. Some of these spokesmen and representatives have even gone to the extent of misrepresenting the conditions and true facts and circumstances to the United States Attorney General, members of Congress and other Department Officers. It now seems clearly evident that they aim to accomplish through political means and other means of intimidations, that which they feel may be achieved by the Indians through the orderly processes of the Courts.

Letter to the Commissioner of Indian Affairs from the Superintendent of the Taholah Indian Agency, March 14, 1940, File 554, Records of the Taholah Agency, Records of the Bureau of Indian Affairs, RG75, Federal Archives and Records Center, Seattle.

In hearing testimony on the bill, members of Congress would be well advised to scrutinize carefully the allegations that are being made about the adverse impact of Indian fishing on the steelhead resource.

They should also keep in mind that the bill's primary sponsor is the former attorney general of Washington State who failed to convince the Supreme Court that an equal opportunity fishery is consistent with Indian treaty rights. See Washington v. Fishing Vessel Ass'n., 443 U.S. at 676-677 and n.22. While representing the State's citizens in that case, he gave the following assurance to the Supreme Court, which the Court quoted in its opinion:

According to the Attorney General:

"The State of Washington and its Department of Fisheries cannot emphasize too strongly that they do not propose to inhibit the enforcement of proper federal court orders. . . .

"Whatever the decision of this Court, the state will implement it. The state believes that after a decision by this Court it will be in a position to comply with District Court orders, if the same are necessary to comply with this Court's decision. We do not believe the state courts could or would take a different point of view. We are confident that they will accede to this Court's interpretation of the treaties in the future just as they have in the past, as this Court expressly found in Puyallup III. - [433 U.S.,] at 177." Brief for State of Washington 95, 96.

Washington v. Fishing Vessel Association, 443 U.S. at 694 and n.35. Mr. Gorton now seeks to use the political process to undermine the Supreme Court's decision.

It is far from clear that Congress could, consistent with the constitution and its special obligations to Indian people, lawfully adopt this bill. But, regardless of the bill's validity and the litigation that is likely to arise on that point, abrogation of Indian fishing rights will generate additional, expensive and time-consuming litigation over the proper measure of just compensation.

The proposed legislation would merely prolong a long-standing legal controversy which has finally been resolved by the courts. Just recently, Congress established a new vehicle for state/tribal cooperation in addressing fishery concerns in Washington State, without abrogating Indian treaty rights. See Salmon and Steelhead Conservation and Enhancement Act of 1980, P.L. 96-561.

If the bill passes, it will postpone indefinitely the healing process which has now begun, and which is so necessary to the effective resolution of Washington State fishery concerns.

Senator GORTON. Mr. Williams.

**STATEMENT OF TERRY WILLIAMS, MEMBER, NORTHWEST
INDIAN FISHERIES COMMISSION**

Mr. WILLIAMS. Mr. Chairman, my name is Terry Williams. I am the fisheries director for the Tulalip Tribes of Washington. We appreciate the opportunity to express our views of this Senate bill.

The Tulalip Tribes recommend against the bill, as they did against S. 874, previously brought before the 97th Congress, on the grounds that it would abrogate treaty rights and would expose the United States to monetary claims of untold magnitude.

S. 954 attempts to achieve the same objectives as S. 874, by overturning tribes' judicially affirmed rights to commercially harvest steelhead trout. A right to harvest the steelhead was upheld and confirmed by the Supreme Court in 1979, as you know, and we feel that since 1979 nothing has changed to alter the opinions. We are encouraged by the administration, that continues to opposed abrogation of treaty rights, fishing rights, and we are confident that the Congress would reject this Senate bill 954 on the same serious legal grounds, constitutional and policy issues raised by the earlier legislation.

The Tulalip Tribes last year, as other tribes, enjoyed a tremendous increase in the steelhead fishery. This last year was one of the best seasons seen since 1971 or 1972. Now the Tulalip manages the Stillaguamish River System and the Snohomish River System on either side of its reservation. The river systems entail about 2,500 miles of rivers and tributaries and are managed for natural stock production, although we do have hatchery stock in both rivers. Also just recently we started a pilot program at Tulalip Bay, releasing steelhead from our hatchery.

Our involvement in steelhead management in the last couple of years has expanded to where we are now looking at the cooperative measures that have been brought out by Senator Evans, by Joe Kutkuhn, by Billy Frank. Those that have testified today have talked about the tribes that are looking at this bill not only in a form of opposition, but we are coming here to tell you that we are bringing alternatives. We are offering another form of management.

In our particular area we have recently become more aggressive and more concerned about working with the Washington Department of Game, and in this last year we managed to get through the season without any FAB's, similar to what Jim Harp just mentioned. We have been able to work around a lot of the problems and start trying to find avenues to get through seasons without the confrontations.

Not only did we work with the Washington Department of Game, but we worked with the sportsmen. The Tulalip Tribes last April held a second anniversary with Trout Unlimited, with monthly meetings. We have been meeting for 2 years now, over 2 years last April, and we have invited the sportsmen to participate in our management, to be free to participate in our test fisheries, to examine our hatchery operations, to examine our management, how we come to decisions that end up in allocations.

Trout Unlimited has become a major part in stopping a lot of the problems that we have had at Tulalip, as far as fisheries management and allocations. As you know, Senator, in Snohomish County where the Tulalip Tribe sits, during the 456 campaign we were probably in the hottest spot in the State. Snohomish County is one of the most notorious—as far as fishing conflicts—there has been in the State. In the last 2 years we have started turning that around, and in the last 6 months we have gained tremendous strides. We believe that if we continue this type of cooperation, that we will eventually see the end of these initiatives coming to this Congress.

Not only have we worked with Trout Unlimited but we are also working with Northwest Water Resources, a group of industries who have come together to look at other problems that we have on our river systems—our habitat, our land use practices, and the things that affect both timber and fisheries. We are developing plans to where we can both work together on the same system, and we can live together and we can profit together off of what we feel is our right and our livelihood. We also work with the Washington Forest Protection Association, doing the same type of planning and the type of cooperation that is necessary to continue on.

We are working with Snohomish County and Seattle Metro. Tulalip has signed agreements with Snohomish County and Seattle Metro to do stream projects—stream surveys, stream enhancement, and stream analysis. Last year the Tulalip Tribe surveyed 156 miles for Snohomish County, turned that information over to their crews, who went back in and cleaned up 51 different habitat sites. Seattle Metro took that information and helped to analyze what we're doing and to create a better program for this year. This year we are now surveying, Tulalip is surveying over 400 miles for information for both the county and the Seattle Metro.

The types of cooperative efforts that have been going on are leading toward the enhancement of the steelhead resource. We feel that in the long run the types of programs we are developing will separate the problems between the sportsmen and the tribes, because that is where the problem lies. It is not in the steelhead itself. It is in the political and emotional mode. That's where the problems are coming from. The steelhead is on an increase in the Snohomish and Stillaguamish River system.

I think that one of the things I also wanted to say, you brought up earlier a question of the monetary value of the steelhead to the tribes. Now I don't have any figures available for you right now but I can tell you in another perspective that, as Billy said, our fisheries are in December and January. When you look at the year-round focus of the Indian commercial harvest and their livelihood, the income in December and January is what carries them through the winter months. Predominantly the other fisheries are in the spring and summer and fall.

If you were to eliminate the winter months fishery, it would be like somebody working for an industry and working for 11 months of the year, and then having his 12th month taken away from him. It is important, not only financially but culturally, and it is part of the religion that the people have that has been affirmed to them by the Supreme Court. It has been affirmed to them by this Con-

gress. It has been affirmed by the President that we deal, as governments, to another government on how we regulate and how we enforce and how we live, not only with our resources but within ourselves and our government. We control our destiny, and that's what we're talking about here.

I would accept any questions that you have to offer.

Senator GORTON. Thank you. We will hear either of the others. Would you like to speak? Do you have statements?

Mr. Harder.

STATEMENT OF RANDY HARDER, MEMBER, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. HARDER. My name is Randy Harder and I am representing the Point No Point Treaty Council. I did not prepare any written testimony so I would like to present this oral statement.

The Treaty Council is a fisheries cooperative of four western Washington tribes—the Port Gamble Klallam, the Jamestown Klallam, the Lower Elwha Klallam, and Skokomish. The Treaty Council's fisheries management responsibilities cover over 1,200 river miles and approximately three-quarters of the Puget Sound marine waters. Within this large treaty area, steelhead trout are managed to achieve the maximum use of the resource for recreational, commercial, ceremonial, and subsistence purposes. The Treaty Council strives to do this in cooperation with the State of Washington and other tribal management interests.

Contrary to these broad management goals, the Steelhead Trout Protection Act will focus its benefits on one user group—the recreational fishermen. This would destroy years of building cooperative management goals to benefit all resource interests, and presents a clear violation of Indian treaty rights by prohibiting commercial steelhead fisheries under the guise of protecting them.

The Point No Point Treaty Council opposes this bill because of its single-purpose use, in addition to the bill's obvious attempt to legislate away treaty reserve fishing rights to steelhead. The value of steelhead to tribal people is that they are priceless. The right to harvest them is not for sale, as they belong not only to us but to future generations of tribal members. Steelhead are an integral part of the culture of the tribes.

This is why the Point No Point Treaty Council has always contributed to the enhancement of steelhead by producing steelhead trout at two tribal hatcheries. Our best example of a large contribution to the resource is the Lower Elwha Klallam Program, which has produced steelhead for 8 years. The 1986 release of steelhead smolts into the Lower Elwha River is expected to return approximately 4,600 adult steelhead, or three-quarters of the total steelhead run, yet the tribal fishermen will only take one-half of the harvestable amount, leaving the rest to a popular recreational fishery.

In addition to steelhead enhancement activities, the Treaty Council has initiated a broad range of research programs designed to effectively manage the steelhead stocks in the treaty area. Many of these include coded wire tagging of smolts and subsequent sampling of adults to estimate the return. In a first-time-ever coopera-

tive program with the Washington Department of Game, adult tagged fish were sampled from both commercial and sport catches to estimate natural spawning runs versus the artificial propagation. Research data has shown that rivers managed by tribes are receiving excellent returns.

Cooperation between the game department and the tribes is critical to effective steelhead management, particularly during this period of rebuilding runs. Senate bill 954 seriously undermines such cooperative progress. It would also weaken the tribes' enhancement contribution to the resource and, most important, abrogate a U.S. treaty promise made to the tribes of the Point No Point Treaty Council.

On behalf of the Point No Point Treaty Council, I urge this committee to reject Senate bill 954 as an anti-Indian political gesture. In order to continue the progress the State of Washington and the tribes have made as comanagers of the steelhead resource, this is the only rational choice.

Senator GORTON. Thank you very, very much.

Now, Mr. Lane, do you wish to speak?

STATEMENT OF FRED LANE, MEMBER, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. LANE. Mr. Chairman, my name is Fred Lane, from the Lummi Tribe. We are going to present written testimony, but I would like to take an opportunity to make a couple of quick comments and observations.

First of all, the steelhead we realize has had a really rough life, but it has not been contributed to by the Indian people. There has been a lot of destruction of the habitat, the streams, by logging practices, et cetera. However, I feel that we are on the right track because the tribes currently in the State of Washington are sitting down with a group called the water resource panel. We feel very strongly that, working together on a cooperative basis, we will be able to protect the steelhead once and for all, but we are spending too much time in courts. We are spending too much time in hearings. We would rather be instructing our attorneys to be sitting down and working out contracts with people on the water resource panel.

The other comment I would make would be, very simply, not too long ago we received a phone call from one of the largest fishing processors in the Northwest. He requested at that time—he wanted to know if the Lummi Tribe and other tribes could increase tremendously the volume of steelhead. I asked him what the reason would be and he said, "Well, very simply, the winter months"—like indicated here—"harm the non-Indian business person also." Apparently Norway has produced a king salmon that is really flooding the market out in the Northwest in the winter months, and so his request was to have the tribes produce a lot of steelhead so the processors in the Northwest would have an opportunity to process salmon and stay in the marketing area.

The first thing I did, Mr. Chairman, was say, "We would be glad to talk to the other tribes, but would you please get hold of Senator

Gorton and inform him of what the reasons would be so there is no misunderstanding." I just wanted to point those things out.

In the Lummi Tribe, yes, we do have an accurate count of the salmon that is taken, of the steelhead. We also have the amount of taxes that we place on all the salmon by the fishermen. I do not have them with me. That will be part of the testimony, and we will be submitting our annual report, which is a good one.

Senator GORTON. Thank you, Mr. Lane.

Mr. LANE. One other comment: We would also like to point out that the Lummi Tribe gave up quite a bit on that United States-Canada treaty, and we will be talking to you later on about some of that. [Laughter.]

Senator GORTON. OK.

Mr. LANE. Thank you.

Senator GORTON. Bill, thank you for your testimony and for that of all of your panel. We really appreciate it.

Mr. WILLIAMS. Mr. Chairman, I would like to add, too, that I forgot to mention, Tulalip Tribes will be submitting a statement later on.

Senator GORTON. Fine, the record will be kept open for those.

Mr. FRANK. Thank you, Mr. Chairman.

[At the time the hearing went to press, the statement referred to had not been received.]

Senator GORTON. Our next panel will be Mr. Pinkham and a number of other representatives of the Columbia River Inter-Tribal Fish Commission.

We also have received a statement on the bill from Senator Symms, which will be included in the record immediately following that of Senator McClure.

[See p. 22.]

Senator GORTON. Mr. Pinkham, you may proceed and may introduce the rest of the members of the panel.

STATEMENT OF ALLEN PINKHAM, CHAIRMAN, COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

Mr. PINKHAM. Thank you; I appreciate the opportunity to be here and appear before the committee to submit our views on this very important bill. With me I have Mr. Levi George from the Yakima Indian Nation; Mr. Harold Culpus from Warm Springs; Delbert Frank from Warm Springs; myself, Allen Pinkham, vice chairman of the Nez Perce Tribal Executive Committee and also chairman of the Columbia River Inter-Tribal Fish Commission. On my right is Mr. John Platt, a CRITFC policy assistant, and Mike Matylewich a CRITFC fishery biologist. We also have Tom Eli and Lonnie Selem from the Yakima Indian Nation, and we would like to submit, on behalf of the Umatilla Tribe, a statement of Kathryn Brigham.

Senator GORTON. We will accept that written comment. We have yours, which will be a part of the record, and we will keep the record open for any other similar statements which members of the commission wish to make.

Mr. PINKHAM. Also, Senator Gorton, I would like to reaffirm my testimony of 1981 in opposition to the very same bill that we are

discussing today. We opposed the bill then, and we opposed S. 954 now because of the negative economic, cultural, and religious impacts upon our tribes and resources.

I am going to try and summarize the written statement as much as possible in the interests of time here.

Once again, our Commission and its member tribes must come before this committee and ask that the United States keep its solemn promise to guarantee our reserved right to take fish. Once again, despite overwhelming evidence in the record, we must present data demonstrating that the Indian commercial fishery for steelhead is not abusing the productivity of the resource. Once again, we must call upon our non-Indian neighbors who care about fish resources to acknowledge and accept our treaty rights, so that we can get on with efforts to identify and act upon the true causes of resource depletion.

When we testified before this committee in 1981, we demonstrated that the steelhead run was the strongest of all anadromous fish runs on the Columbia River. That reality has not changed. In fact, the run has further increased to the point where the 1984 number of steelhead over Bonneville, the first dam that fish must pass on their upstream migration, was the highest since the dam was built in 1938. Historically high counts were also recorded at the Dalles and the John Day Dams on the Columbia and at the Lower Monumental and the Lower Granite Dams on the Snake.

Figures 1 and 2 compare the various upper Columbia River salmon and steelhead runs, as shown by their numbers passing Bonneville. Figures 3 and 4 compare the runs passing Lower Granite. Tables 1 and 2 given salmon and steelhead counts on the Columbia and Snake River Dams.

Despite the remarkable 1984 steelhead run on the Columbia River and the Snake River, our tribes have been subjected to vicious attacks by Idaho fish and game officials and the State's attorney general. These attacks unleashed a wave of anti-Indian feeling in the Idaho public. Only the rhetoric of the mid-1970's following the *Boldt* decision compares with media accounts blaming our fishery for the lower-than-expected 1984 steelhead returns to the Salmon River Basin.

With the 1984 steelhead run into Idaho the largest since Lower Granite was built in 1975, why was there such an outcry—an outcry that would lead the Senators from Idaho to joint in cosponsoring this treaty abrogation bill? At the heart of the issue is a State agency, the Idaho Department of Fish and Game, that made an unscientific prediction into Idaho's Pahsimeroi Hatchery on an upper Salmon River tributary—an overblown prediction of steelhead numbers that caused the Salmon Valley business community to plan for a large influx of sportsmen in a bonanza year. Commercialization of steelhead by sporting goods stores, motels, guides and packers, and other service industries is big business in Idaho.

The fishing public was understandably excited, and looked forward to an unusually successful season. When the run did not materialize, the community needed an explanation and the department needed a scapegoat. The Indian tribes that had enjoyed their first commercial steelhead fishery in almost a decade were the obvious candidates.

We have attached for your review a briefing paper on what happened to the 1984 Salmon River Steelhead run. Briefly stated, that run did not even approach the magnitude predicted by the department. Why not? Our research has revealed that the culprits were a severe fish disease and a department biologist's improper use of previous hatchery return data in predicting the run.

Figure 7 shows the 1984 salmon and steelhead runs over Lower Granite Dam. One can see at a glance that steelhead are by far the largest run of fish into the Snake River system in Idaho, while fall chinook and sockeye are nearly gone, and coho salmon are no longer endangered—they are extinct.

How could such a tragedy occur? The answer is quite simple. If you do not want Indians to harvest steelhead as an incidental catch in a mixed-stock salmon fishery, do not produce salmon that migrate upriver at the same time. Figure 8 shows the migration timing of salmon and steelhead into the Columbia River. As you can see, the peak migration of group A steelhead is closely associated with that of sockeye and summer chinook salmon, while the group B steelhead peak coincides with fall chinook and coho salmon. Only spring chinook migration falls outside the major steelhead migration. Spring chinook also happens to be a highly prized sport fish in the Columbia and Snake River systems.

Manipulations of runs through hatchery practices is not only possible but is a reality in the Columbia River Basin. We have studied the practices of those who control Federal- and utility-funded hatchery production, and what we have found is disturbing, immoral, and perhaps even illegal. Table 4 on the salmon and steelhead production in the Snake River system shows that only steelhead and spring chinook are propagated to a significant extent there. The reason is not hard to understand, since these two species are considered the primary sport fish in Idaho.

Extinction of Snake River coho is also explained, for there is no production of that species. As for the others, fall chinook releases in the Snake River above Lower Granite Dam have been minimal and will terminate about 1985. Token releases of sockeye stock imported from British Columbia may or may not continue in upper salmon river lakes. Releases of summer chinook will continue, with the ultimate goal of developing a sports fishery.

These objectives are clearly expressed in the Idaho Department of Fish and Game's "Idaho Anadromous Fishery Management Plan" covering 1985 to 1990, adopted by the State in March of this year. Appendices A and B attached list the department's proposed hatchery release programs in detail. It is evident that only steelhead, spring chinook, and summer chinook will survive under this plan, since no hatchery programs are planned for fall chinook, coho, or sockeye. The overall thrust of the department's program to eliminate these latter runs is reminiscent of a famous statement during the Vietnam War, paraphrased here as, "We had to destroy the runs to save them . . . from the Indians."

We have discussed with State agencies the need for comprehensive planning of both harvest and production, and have begun a co-operative program with the Oregon and Washington agencies to replace lost fish by changing existing hatchery operations. We hope that the Idaho Department of Fish and Game will soon join us in

this endeavor and will cease to base its decisions on what to rear and release solely on whether a fish contributes to a sports fishery, or whether a tribal harvest of salmon may cause a tribal harvest of steelhead. Only by working together can we reverse the decline of salmon runs into Idaho and return them to a level comparable to that of steelhead. Our harvest of steelhead will continue, as will the harvest of salmon that migrate at the same time. Proper management by tribes and States will ensure that runs are rebuilt and that both tribal and nontribal fishers have the opportunity to catch fish.

In sum, the intent of S. 954 to decommercialize, and thereby presumably to protect steelhead by eliminating Indian treaty commercial harvests, cannot be supported by biological fact, administrative need, or management practicalities. The sole product of this bill will be discriminatory and unworkable reallocation of the catch, and not conservation of the resource.

Problems facing salmon and steelhead in the Columbia River system can best be corrected if efforts are channeled into fulfilling mitigation requirements and addressing environmental issues that have long been recognized by the tribes, the fishery agencies, and an informed and caring public.

I thank you for this opportunity to present this for the record here.

[Mr. Pinkham's prepared statement, on behalf of the Columbia River Inter-Tribal Fish Commission, with attachments, and the referred to statement of Kathryn Brigham, on behalf of the Umatilla Tribe, follow. Text resumes on p. 253.]

TESTIMONY OF ALLEN PINKHAM, CHAIRMAN OF THE
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON JULY 11, 1985, WASHINGTON, D.C., CONCERNING S.954

Mr. Chairman, members of the committee, thank you for the opportunity to testify on this issue of great importance to member tribes of the commission, Indian people throughout the nation, and citizens of the United States who stand behind the Constitution and the principles it represents.

Once again, our commission and its member tribes must come before this committee and ask that the United States keep its solemn promise to guarantee our reserved right to take fish. Once again, despite overwhelming evidence in the record, we must present data demonstrating that the Indian commercial fishery for steelhead is not abusing the productivity of that resource. Once again, we must call upon our non-Indian neighbors who care about fish resources to acknowledge and accept our treaty rights so that we can get on with efforts to identify and act upon the true causes of resource depletion.

Although Indians are being scapegoated in some quarters for resource depletion caused by policies and practices we have decried for years, the fish are the real scapegoats. This is because the Washington state initiative that would decommercialize steelhead is in fact a nationally coordinated effort to abrogate Indian treaties, and as such it impairs the cooperation essential to rebuilding anadromous fish runs. Organizations such as the Interstate Congress for Equal Rights and Responsibilities, Equal Rights for Everyone, and Wisconsin Alliance for Rights and Resources apparently do not care about the future of Pacific Northwest salmon and steelhead; their support for S/SPAWN's initiative seems based upon the assumption that they could fool a majority of Washington voters into thinking that resource conservation was the issue addressed by I-450. While these forces barely succeeded last November, we trust that the truth of their treaty abrogation objective will not escape the discerning eyes of Congress or of Northwest citizens who are sincere in their concern for salmon and steelhead.

When we testified before this committee in 1981, we demonstrated that the steelhead run was the strongest of all anadromous fish runs on the Columbia River. That reality has not changed. In fact, the run has further increased to the point where the 1984 number of steelhead over Bonneville, the first dam that fish must pass on their upstream migration, was the highest since the dam was built in 1938. Historical high counts were also recorded at The Dalles and John Day Dams on the Columbia and at Lower Monumental and Lower Granite Dams on the Snake. Figures 1 and 2 compare the various upper Columbia River salmon and

steelhead runs, as shown by their numbers passing Bonneville. Figures 3 and 4 compare the runs passing Lower Granite. Tables 1 and 2 give salmon and steelhead counts at Columbia and Snake River dams.

Despite the remarkable 1984 steelhead run on the Columbia and Snake Rivers, our tribes have been subjected to vicious attacks by Idaho fish and game officials and the state's attorney general. These attacks unleashed a wave of anti-Indian feeling in the Idaho public. Only the rhetoric of the mid-1970s following the Boldt decision compares with media accounts blaming our fishery for 1984's lower-than-expected steelhead returns to the Salmon River basin.

With the 1984 steelhead run into Idaho the largest since Lower Granite was built in 1975, why was there such an outcry -- an outcry that would lead the Senators from Idaho to join in co-sponsoring this treaty abrogation bill? At the heart of the issue is a state agency, the Idaho Department of Fish and Game, that made an unscientific prediction of a steelhead run to Idaho's Pahasimeroi Hatchery on an upper Salmon River tributary -- an overblown prediction of steelhead numbers that caused the Salmon Valley business community to plan for a large influx of sportsmen in a bonanza year. (Commercialization of steelhead by sporting goods stores, motels, guides and packers, and other service industries is big business in Idaho.) The fishing public was understandably excited, and looked forward to an unusually successful season. When the run did not materialize, the community needed an explanation and the department needed a scapegoat. The Indian tribes that had enjoyed their first target commercial steelhead fishery in almost a decade were the obvious candidates.

We have attached for your review a briefing paper on what happened to the 1984 Salmon River steelhead run. Briefly stated, the run did not even approach the magnitude predicted by the department. Why not? Our research has revealed that the culprits were a severe fish disease and a department biologist's improper use of previous hatchery return data in predicting the run.

In another aspect related to S.954, this bill, like its predecessor, is based upon the premise that Indian tribes would be willing to forego their right to sell their steelhead catch so long as salmon were still available. That position is fundamentally flawed. During the 1981 hearing we explained how the Columbia River treaty tribes had entered into an agreement with the states and federal government to not target on steelhead if salmon harvests were assured by upriver enhancement and controls on ocean harvest. The agreement, part of the interim settlement of the tribes' 1968 fishing rights suit against the state of Oregon, was a court-approved management scheme known as the five-year plan. In exchange for the tribes' pledge to limit a treaty Indian commercial steelhead fishery, the states and federal government pledged that certain salmon runs would be

improved to make up for steelhead losses.

The tribes reduced their fall season steelhead catch from 31,300 to 3,700 in the five-year period from 1977 to 1981, but the state and federal agencies did not keep their end of the bargain, and tribal fishermen are still owed 370,000 fall chinook. Figure 5 illustrates the terms of the plan and the actual treaty Indian catch of fall chinook and steelhead. Table 3 and Figure 6 compare the Indian catch of steelhead and the non-Indian sport catch of steelhead for the period 1977-1984. The treaty Indian steelhead catch since 1977 has consistently fallen below the 50-percent allocation guaranteed by the U.S. Supreme Court decision in Washington v. Washington State Passenger Fishing Vessel Association, 443 U.S. 658 (1979).

The five-year plan's salmon for steelhead trade was not only inequitable in performance, but is almost ludicrous when viewed in light of the management philosophy that spawned it. Because if you want to eliminate the treaty catch and sale of steelhead, you must not only prohibit steelhead sales, but also eliminate or permit the elimination of every anadromous fish run that coincides with the steelhead run. The shocking truth is that through allocation of federal and utility dollars the fishery agencies have accomplished this destructive goal on one species in the Snake River system, and two others in that system are close to annihilation.

Figure 7 shows 1984 salmon and steelhead runs over Lower Granite Dam. One can see at a glance that steelhead are by far the largest run of fish into the Snake River system and Idaho, while fall chinook and sockeye are nearly gone. And coho salmon are no longer endangered; they are extinct. How could such a tragedy occur? The answer is quite simple: If you do not want Indians to harvest steelhead as an incidental catch in a mixed-stock salmon fishery, do not produce salmon that migrate upriver at the same time. Figure 8 shows the migration timing of salmon and steelhead in the Columbia River. As you can see, the peak migration of Group A steelhead is closely associated with that of sockeye and summer chinook salmon, while the Group B steelhead peak coincides with that of fall chinook and coho salmon. Only spring chinook migration falls outside the major steelhead migrations. Spring chinook also happens to be a highly prized sport fish in the Columbia and Snake river systems.

Manipulation of runs through hatchery practices is not only possible, but is a reality in the Columbia basin. We have studied the practices of those who control federal- and utility-funded hatchery production, and what we have found is disturbing, immoral, and perhaps illegal. Table 4 on salmon and steelhead production in the Snake River system shows that only steelhead and spring chinook are propagated to a significant extent there. The reason is not hard to understand, since these two species are considered the primary sport fish in Idaho. Extinction of Snake River coho is also explained, for there is no production of that

species. As for the others, fall chinook releases in the Snake River above Lower Granite Dam have been minimal, and will terminate after 1985. Token releases of sockeye stock imported from British Columbia may or may not continue in the upper Salmon River lakes. Releases of summer chinook will continue, with the ultimate goal of developing a sport fishery.

These objectives are clearly expressed in the Idaho Department of Fish and Game's Idaho Anadromous Fishery Management Plan 1985-1990, adopted in March of this year. Appendices A and B (attached) list the department's proposed hatchery release programs in detail. It is evident that only steelhead, spring chinook, and summer chinook will survive under this plan, since no hatchery programs are planned for fall chinook, coho, or sockeye. The overall thrust of the department's program to eliminate these latter runs is reminiscent of a famous statement during the Vietnam war, paraphrased here as "We had to destroy the runs to save them from the Indians."

Steelhead decommercialization is often defended on the premise that sport license fees pay much of the cost of steelhead hatchery propagation. This is not supported by fact. To our knowledge, only one hatchery in Oregon located above Bonneville Dam is state-funded, and one rearing pond in Washington is funded by the Northwest Steelheaders. Most Columbia basin hatcheries are funded exclusively by private and public power companies and the federal government as compensation for destruction of fisheries by mainstem Columbia and Snake River dams. Table 5 lists Columbia River steelhead hatchery facilities above Bonneville Dam and their associated funding entities. Figure 9 shows their locations.

Legislation classifying steelhead as a game fish has been in effect for non-Indians for some years, but has not eliminated its catch by non-Indian commercial fishermen. Lower river non-Indian gillnetters continue to take steelhead while fishing for salmon, but often fail to report the steelhead catch to fishery agencies, thereby creating management difficulties. Agencies are aware that non-sport steelhead catches are inevitable because of the concurrent timing and mingling of steelhead with sockeye, chinook, and coho salmon in the fishery. Extending the game fish classification to cover Indian fishermen will simply compound the problems of ineffective regulations and incomplete catch reporting.

We have discussed with state agencies the need for comprehensive planning of both harvest and production, and have begun a cooperative program with the Oregon and Washington agencies to replace lost fish by changing existing hatchery operations. We hope that the Idaho Department of Fish and Game will soon join us in this endeavor, and will cease to base its decisions of what to rear and release solely on whether a fish contributes to a sport fishery or whether a tribal harvest of salmon may cause a tribal harvest of steelhead. Only by working together can we reverse the decline of salmon runs into Idaho and

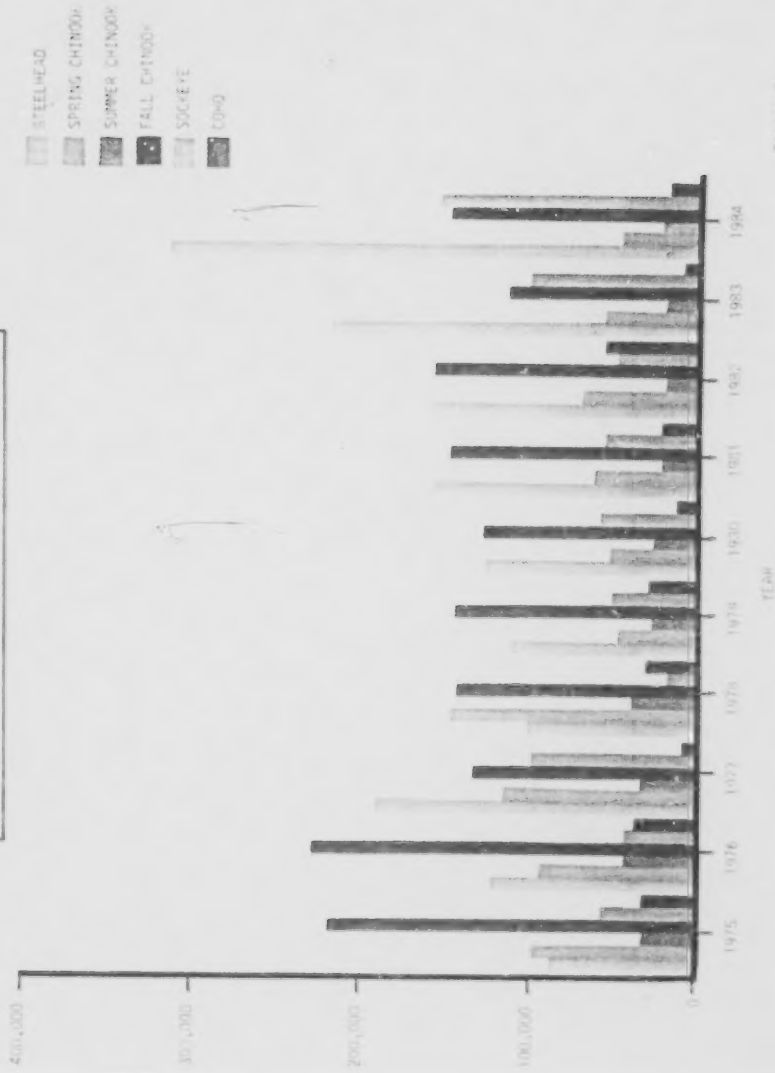
return them to a level comparable to that of steelhead. Our harvest of steelhead will continue, as will the harvest of salmon that migrate at the same time. Proper management by tribes and states will ensure that runs are rebuilt and that both tribal and non-tribal fishers have the opportunity to catch fish.

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TABLES, FIGURES AND APPENDICES

B O N N E V I L L E D A M P C O N T

Figure 1
CATTIC 6/85

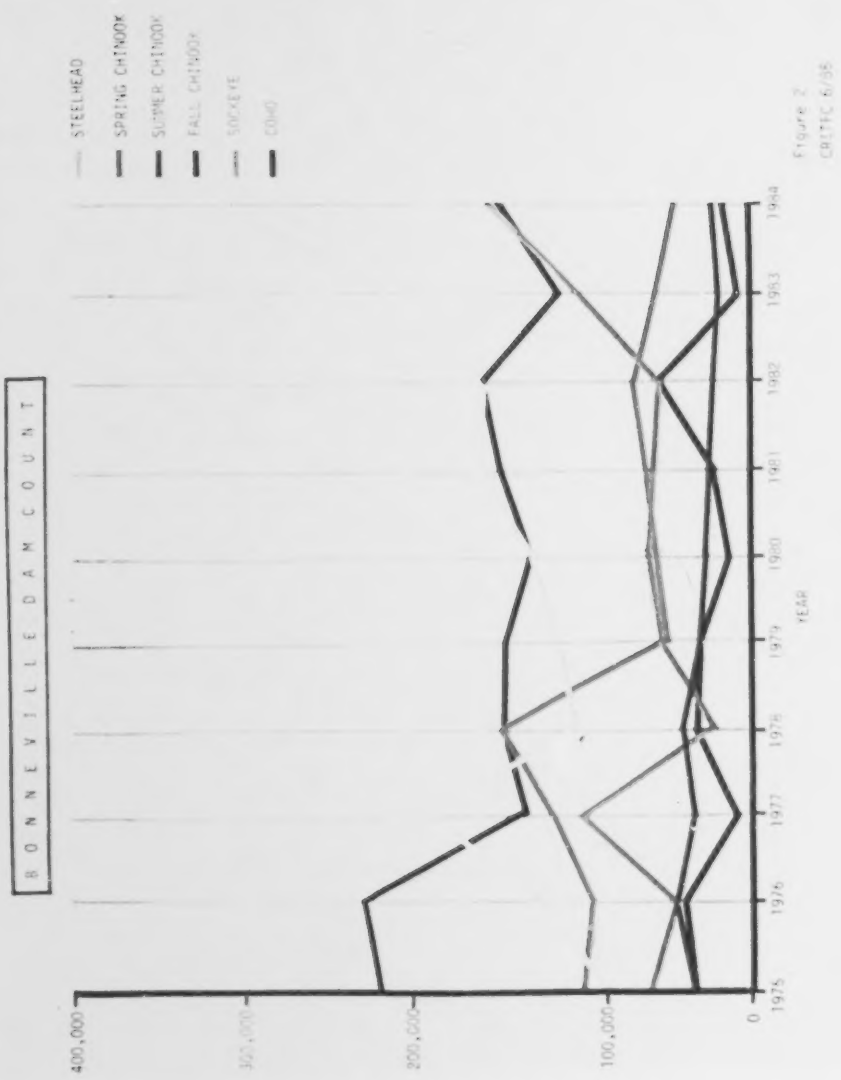


Figure 2
CRITIC 6/88

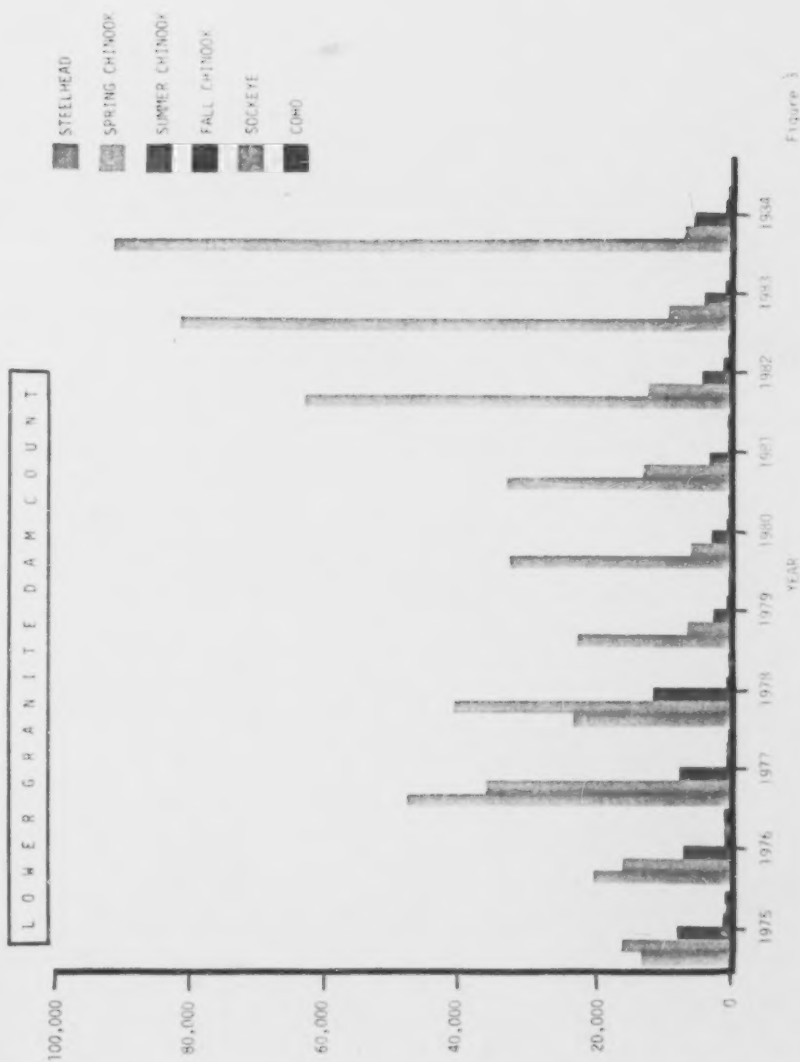


Figure 3
CRITFC 6/85

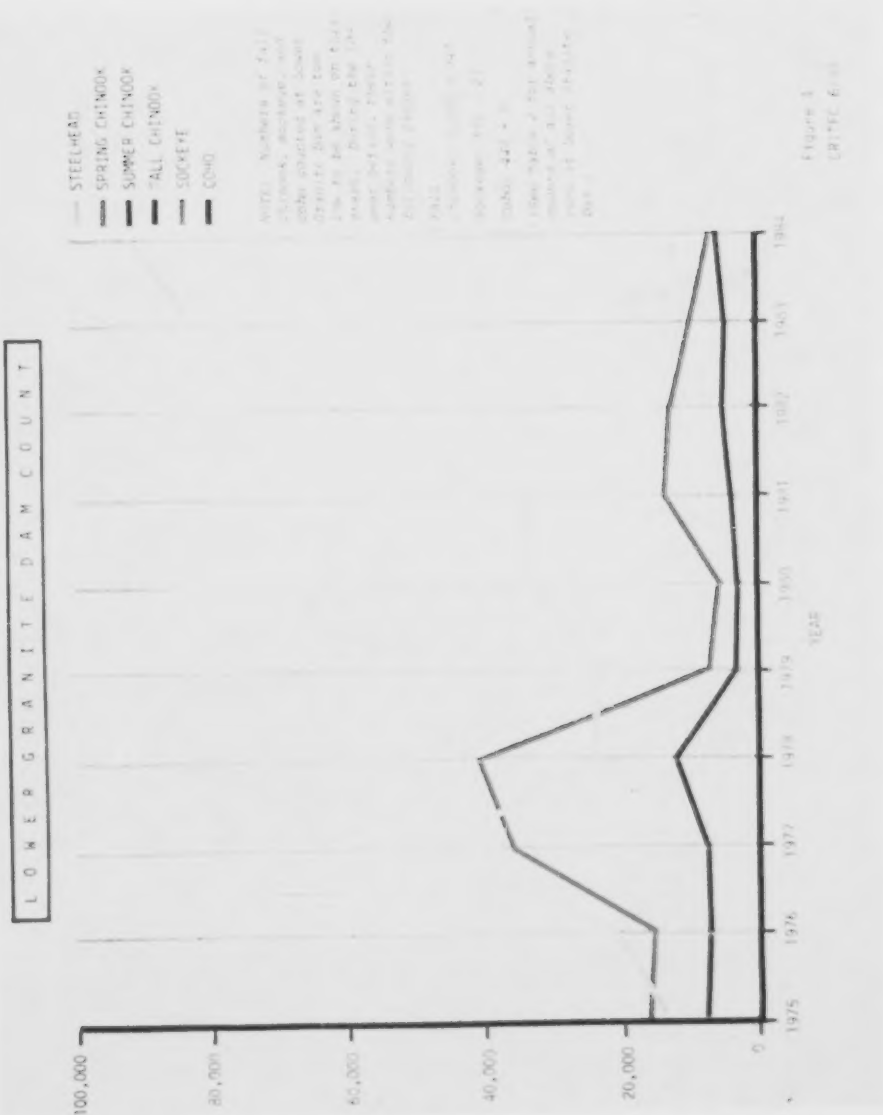


Figure 3
CRITIC 6.00

Counts of Summer Steelhead at Nine Columbia River Dams, June 1-October 31¹

Year	Bonneville ²		The Dalles	John Day	Methay	Priest Rapids	Ice Harbor	Lower Monumental	Little Goose	Lower Grouse
	Group A	Group B								
1960	76,729	36,328	110,790 ³		94,080	7,408				
1961	78,895	59,790	134,572		102,267	8,335				
1962	86,609	76,824	163,301		160,769	8,661	106,322			
1963	83,355	45,015	119,957		111,062	8,527	68,286			
1964	75,645	40,565	109,983		98,148	5,728	53,301			
1965	120,349	45,262	161,016		117,236	8,614	56,029			
1966	96,887	45,379	145,359		141,891	13,006	62,827			
1967	78,378	42,606	121,614		75,136	6,760	42,045			
1968	68,083	38,046	146,920	113,265	103,710	8,882	72,238			
1969	103,140	36,158	111,107	78,357	72,585	5,870	51,861	50,641		
1970	77,662	35,099	98,678	79,174	67,411	5,278	49,011	52,063	48,948	
1971	140,591	52,349	150,707	113,913	108,443	10,621	63,790	65,678	63,370	
1972	106,735	79,519	134,681	138,139	91,813	5,618	61,187	64,031	57,312	
1973	99,181	57,492	99,033	89,875	60,596	6,710	35,914	36,811	33,240	
1974	112,179	23,056	68,984	39,680	25,370	2,915	11,197	13,662	11,625	
1975	70,506	13,616	55,323	31,463	21,842	2,422	15,245	16,171	13,780	13,553
1976	91,085	31,329	80,196	57,631	51,692	9,112	23,235	20,760	19,497	20,020
1977	112,523	79,205	130,984	100,821	84,995	9,426	53,915	46,708	45,776	48,037
1978	62,438	39,909	58,273	42,816	31,474	4,361 ³	25,444	19,088	23,086	23,565
1979	78,139	34,216	82,638	55,196	48,523	8,275	21,972	17,033	20,085	23,034
1980	83,871	43,737	90,288	73,513	58,034	7,960	43,163	31,282	34,896	32,677
1981	120,754	37,182	110,247	91,572	56,542	8,635	37,105	34,606	36,896	33,234
1982	101,920	54,329	115,416	103,512	70,980	10,653	69,085	59,623	--	63,070
1983	148,370	69,171	169,853	152,658	123,968	31,662	87,508	79,410	--	81,757
1984	186,786	125,742	216,812	194,738	131,225	25,540	91,185	85,485	--	91,389

¹ Counts after October 31 used when available.² Group A is April 1 through August 25. Group B is August 26 through October 31 (see page 10 for total).³ Includes estimate for July 20-30 when no counts were available.

Source: Jensen, Howard. Columbia River Fish Counts, ODFW, January 1985.

Table 1

Table 2 Salmon and Steelhead Run Sizes at Lower Granite Dam
(Adults only)

Year	Spring Chinook	Summer Chinook	Fall Chinook	Sockeye	Coho	Steelhead
1975	16,100	7,600	1,000	209	440	13,523
1976	15,900	7,000	470	531	440	20,020
1977	36,200	7,700	600	458	50	48,037
1978	40,700	11,600	640	123	25	23,565
1979	6,800	2,700	500	25	50	23,034
1980	5,500	2,700	450	96	30	32,677
1981	13,100	3,300	340	218	1	33,234
1982	12,400	4,200	720	211	31	63,070
1983	9,500	3,900	540	122	25	81,757
1984	6,500	5,400	640	47	0	91,389

Source: Jensen, Howard. Columbia River Fish Counts, ODFW, January 1985.

TREATY INDIAN CATCH OF FALL CHINOOK AND STEELHEAD

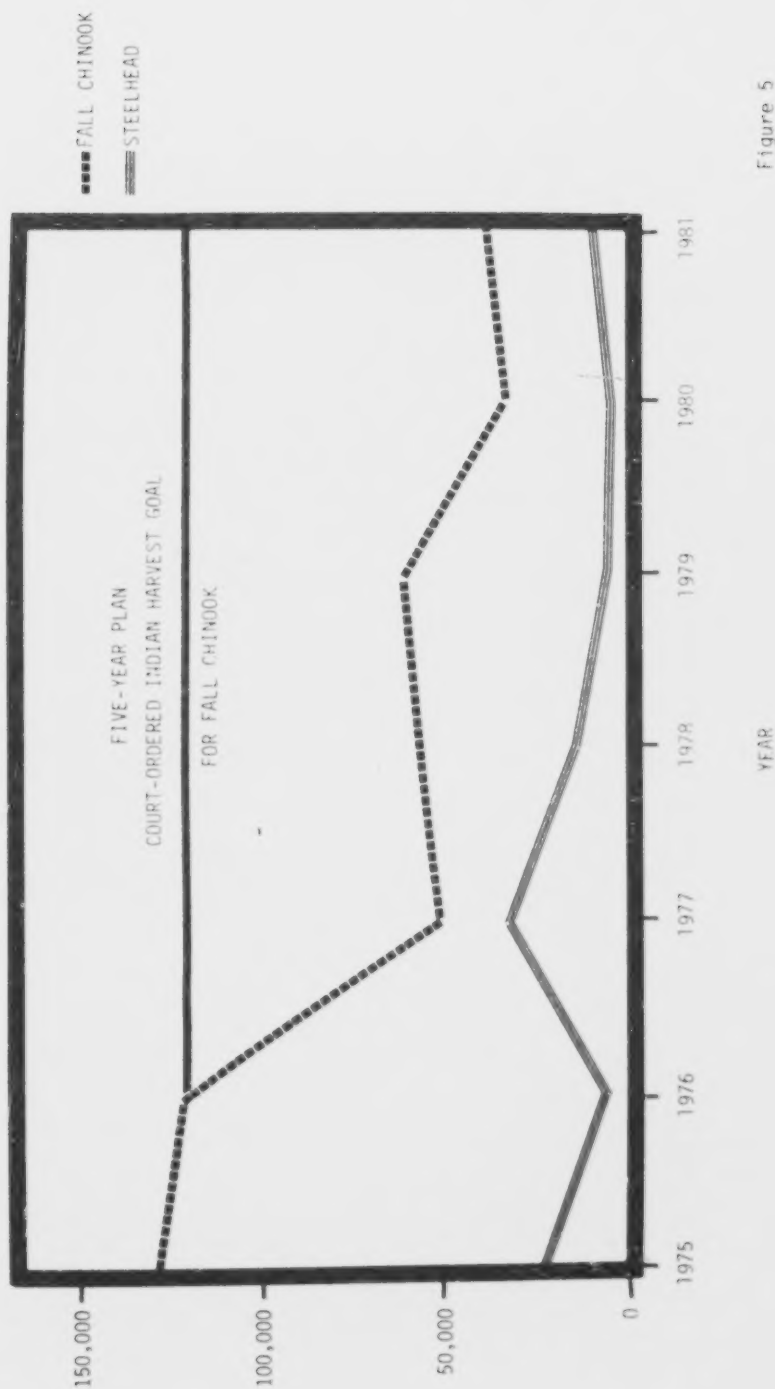


Figure 5
CRITFC 6/85

Table 3 Treaty Commercial Catches of Steelhead by Season from the Columbia River 1977-82 *

<u>Season</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Winter	3,000	4,600	3,300	2,600	4,900	4,100	3,200	3,000
Spring	800	0	0	0	0	0	0	0
Fall	31,000	15,000	5,900	4,700	3,700	5,000	14,800	71,902
Total:	35,100	20,400	9,200	7,300	9,000	9,100	18,000	74,902

Sport Catch of Upriver Steelhead in the Columbia River and Tributaries by Run Year, 1977-82 *

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983^{1/}</u>	<u>1984^{1/}</u>
Oregon	19,435	7,860	8,776	12,910	13,232	12,012	N/A	N/A
Washington	21,787	12,011	11,525	13,021	21,734	15,835	N/A	N/A
Idaho	22,200	4,860	2,900	13,000	11,450	12,300	N/A	N/A
Total:	63,422	24,731	23,201	38,931	46,416	40,147		

* Source: Technical Advisory Committee (TAC) is composed of biologists from CRITFC's four member tribes, Oregon Department of Fish and Wildlife, Washington Department of Fisheries, Washington Department of Game, Idaho Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

^{1/} Sport catch data not available for 1983 and 1984.

CRITFC 6/4/85

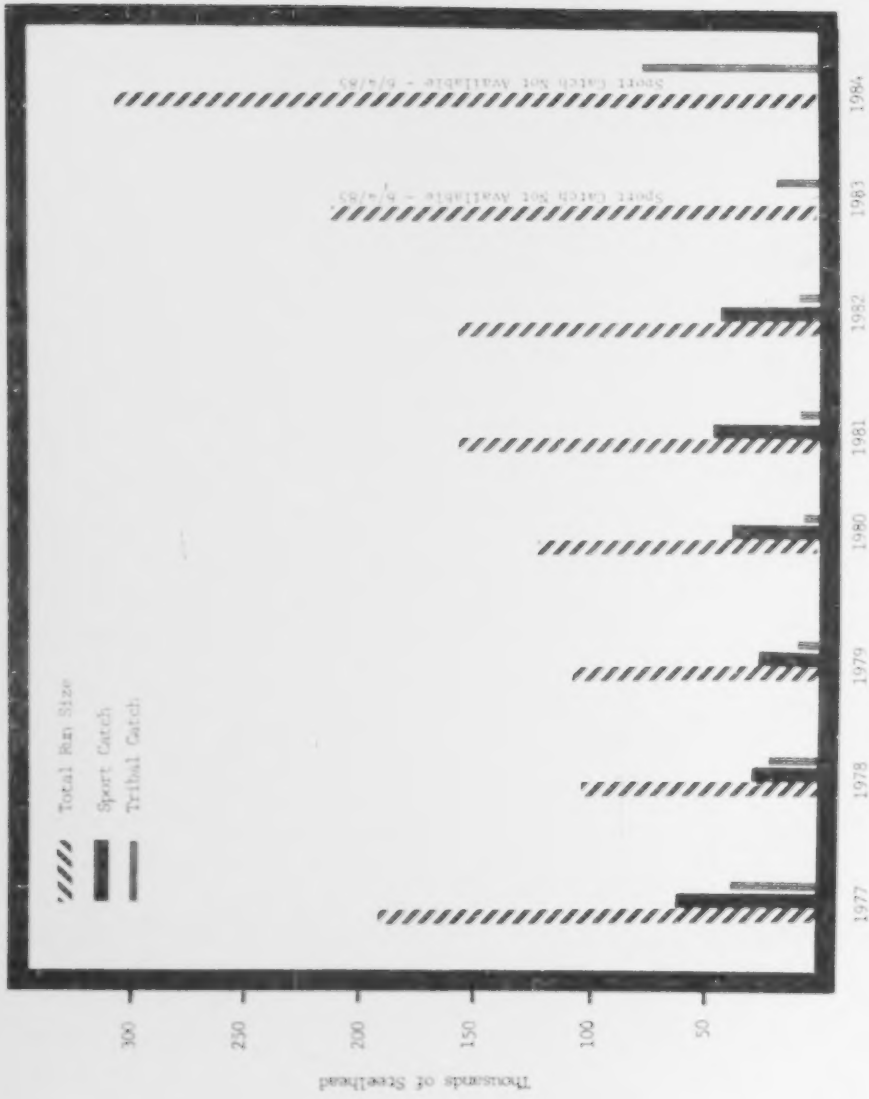


Figure 6
CRITFC 6/85

HARVEST AND TOTAL RUN SIZE OF COLUMBIA RIVER STEELHEAD, 1977-1984

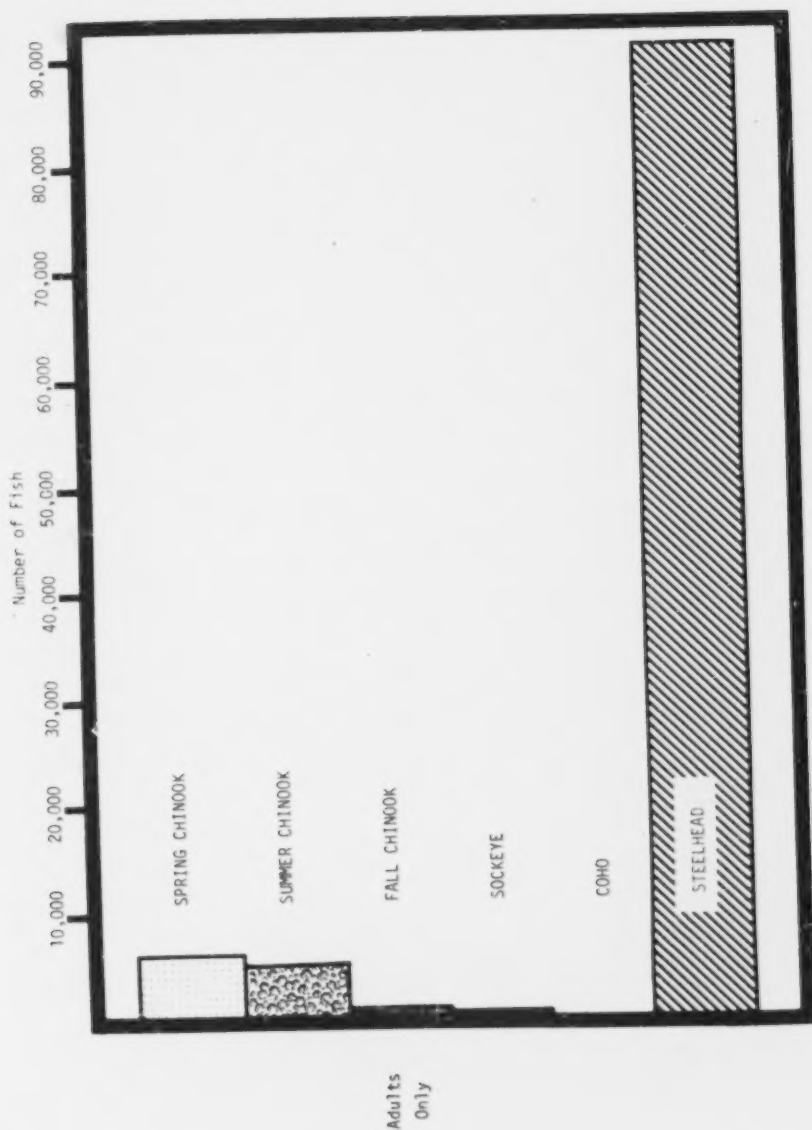
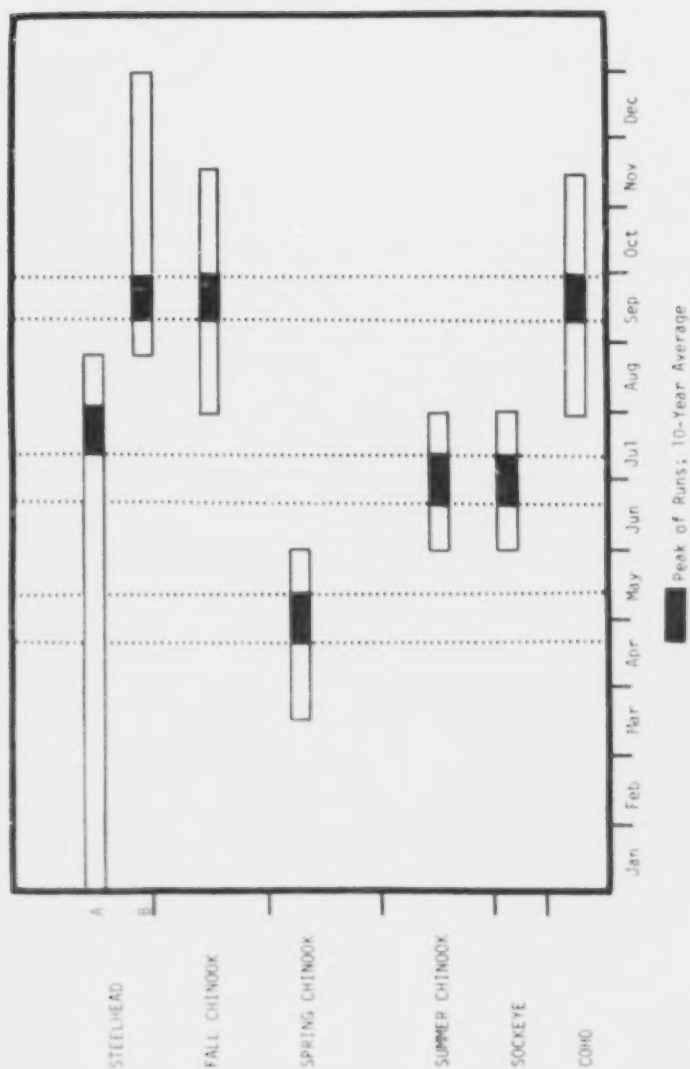


Figure 7
CRITFC 6/85

1984 SALMON AND STEELHEAD RUN SIZES AT LOWER GRANITE DAM



TIMING OF SALMON AND STEELHEAD RUNS IN THE COLUMBIA RIVER COUNTED OVER BONNEVILLE DAM

Figure 8
CRITFC 6/85

Table 4 Release of Salmon and Steelhead in Snake River system
1982-1984

<u>Year</u>	<u>Steelhead</u>	<u>Spring Chinook</u>	<u>Summer Chinook</u>	<u>Fall Chinook</u>	<u>Sockeye</u>	<u>Coho</u>
1984	5,884,000	6,559,300	450,000	427,19	210,000	0
1983	5,565,417	5,626,000	264,000	115,000	630,815	0
1982	<u>5,300,000</u>	<u>2,657,000</u>	<u>148,000</u>	<u>900,000</u>	<u>260,393</u>	<u>0</u>
TOTAL	16,749,417	14,842,300	862,000	1,442,19	1,101,208	0

Appendix A Proposed production and distribution summary Idaho anadromous fish hatcheries, smolt production.

Hatchery	Species	Water planted	Number	Total production
McCall	Summer Ck.	South Fork Salmon	1,000,000	1,000,000
Pahsimeroi	Summer Ck.	Pahsimeroi River	1,000,000	1,000,000
		(Total Summer Chinook - 2,000,000)		
Rapid River	Spring Ck.	Rapid River	2,500,000	3,000,000
		Hells Canyon	500,000	
Sawtooth	Spring Ck.	Upper Salmon River	1,300,000	
		East Fork Salmon River	700,000	
		Valley Creek	100,000	
		Yankee Fork	200,000	2,300,000
Dworshak	Spring Ck.	North Fork Clearwater	500,000	
		Lolo Creek	200,000	1,000,000
		Newsome Creek	200,000	
		American River	100,000	
Clearwater	Spring Ck.	Lochsa River and tribs.	1,500,000	
		Crooked River	500,000	2,200,000
		Red River	200,000	
Footsies	Spring Ck.	Clear Creek	400,000	400,000
		(Total Spring Ck. 8,500,000)		
Dworshak	Steelhead "B"	North Fork Clearwater	1,500,000	
	Steelhead "B"	South Fork Clearwater and tribs.	1,000,000	2,500,000
Clearwater	Steelhead "B"	Crooked River	500,000	
	Steelhead "B"	Lochsa River	1,000,000	
	Steelhead "B"	Captain John Creek	300,000	
	Steelhead "B"	Slate Creek	500,000	
	Steelhead "B"	Whitebird Creek	200,000	2,500,000
Niagara	Steelhead "A"	Pahsimeroi	1,000,000	
	Steelhead "A"	Hells Canyon	1,000,000	2,000,000
Hagerman	Steelhead "B"	East Fork Salmon	1,000,000	1,700,000
	Steelhead "A"	Upper Salmon	700,000	(1.0 B's, 0.7 A's)
Magic Valley	Steelhead "A"	Little Salmon River	800,000	1,500,000
	Steelhead "A"	Lower Salmon tribs.	400,000	
	Steelhead "A"	Panther Creek	300,000	

(Total Steelhead 10.2 million - 6.0 B's, 4.2 A's)

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R9AD001BV

Source: Idaho Anadromous Fishery Management Plan - 1990, March 1985.

Appendix B Proposed distribution summary, Idaho anadromous fish hatcheries eyed eggs, fry, and fingerlings.*

Hatchery	Species	Water planted	Number x 1000 /size	Time
McCall	SuCk	Upper South Fork Salmon	200 fingerling	June
	SuCk	Johnson Creek	200 fingerling	June
	SuCk	East Fork South Fork	100 fingerling	June
Pahsimeroi	SuCk	Salmon River, Robinson Bar	300 fingerling	July
	SuCk	Panther Creek	200 fingerling	July
		(Total summer chinook 1.0 million)		
Rapid River	SpCk	Little Salmon and tribs.	200 fingerling	June
	SpCk	Clearwater Basin	800 fingerling	June
	SpCk	Clearwater Basin	1,000 eyed eggs	Sept
Sawtooth	SpCk	Salmon R.-Stanley Basin trib.	600 fingerling	July
	SpCk	Yankee Fork	200 fingerling	July
	SpCk	East Fork	200 fingerling	July
	SpCk	Slate Creek	100 fingerling	July
Dworshak	SpCk	Lolo Creek	200 fingerling	June
	SpCk	South Fork and Tributaries	300 fingerling	June
Clearwater	SpCk	Lochsa and Tributaries	500 fingerling	June
	SpCk	South Fork Tributaries	500 fingerling	June
		(Total SpCk 4.6 million)		
Dworshak	ShB	South Fork Tributaries	2,000 eggs/fry	May-June
Clearwater	ShB	Clearwater Tributaries	1,000 fry	June
Niagara	ShA	Hells Canyon	500 fingerling	Sept-Oct
Oxbow	ShA	Little Salmon and	500 fry	Sept-Oct
Pahsimeroi	ShA	Lemhi River	500 fry	June
	ShA	Pahsimeroi River	500 fry	June
	ShA	Panther Creek	200 fry	June
	ShA	Yankee Fork	500 fry	June
	ShA	Other Salmon River tribs.	1,000 fry	June
		(Total steelhead 6.7 million)		

* Present hatchery programs are designed to produce smolts; however, excess fry and fingerlings are produced incidentally when excess eggs are available or when survival rates are higher than anticipated. The fry and fingerling plants listed are contingent upon availability of excess eggs, fry, and fingerlings until supplies of eggs and funding for regular supplemental plants are developed.

CRITFC 6/85

Table 5

EXISTING STEELHEAD REARING PROGRAMS
ABOVE BONNEVILLE DAM

	<u>Funding Agency</u>	<u>Operating Agency</u>
Lower Columbia Basin (Bonneville to McNary Dam)		
1. Bonifer Springs	BPA	CTUIR
2. Round Butte Hatchery	PGE	ODFW
3. Oak Springs	ODFW	ODFW
Mid-Columbia Basin (McNary to Chief Joseph Dam)		
1. Wells	Douglas PUD	WDG
2. Chelan	Chelan PUD	WDG
3. Turtle Rock	Chelan PUD	WDG
4. Leavenworth Nat'l Fish Hatchery	USFWS	USFWS
5. Ringold	NMFS	WDG
6. Naches Pond	NWSTU	NWSTU
Snake River		
1. Tucannon Hatchery	USFWS	WDG
2. Lyons Ferry	USFWS	WDG
3. Dworshak Nat'l Fish Hatchery	CoE	USFWS
4. Pahsimeroi Hatchery	IPC	IDFG
5. Hagerman	USFWS	USFWS
6. Magic Valley	USFWS	IDFG
7. Niagara Springs	IPC	IDFG
8. Wallowa Hatchery	USFWS	ODFW
9. Irrigon Pond	USFWS	ODFW

USFWS = U.S. Fish and Wildlife Service

ODFW = Oregon Department of Fish and Wildlife

PUD = Public Utility District (Chelan, Douglas counties)

PGE = Portland General Electric Company

NWSTU = Northwest Steelheaders of Trout Unlimited

CTUIR = Confederated Tribes of the Umatilla Indian Reservation

NMFS = National Marine Fisheries Service

WDG = Washington Department of Game

CoE = Corps of Engineers

IPC = Idaho Power Company

IDFG = Idaho Department of Fish and Game

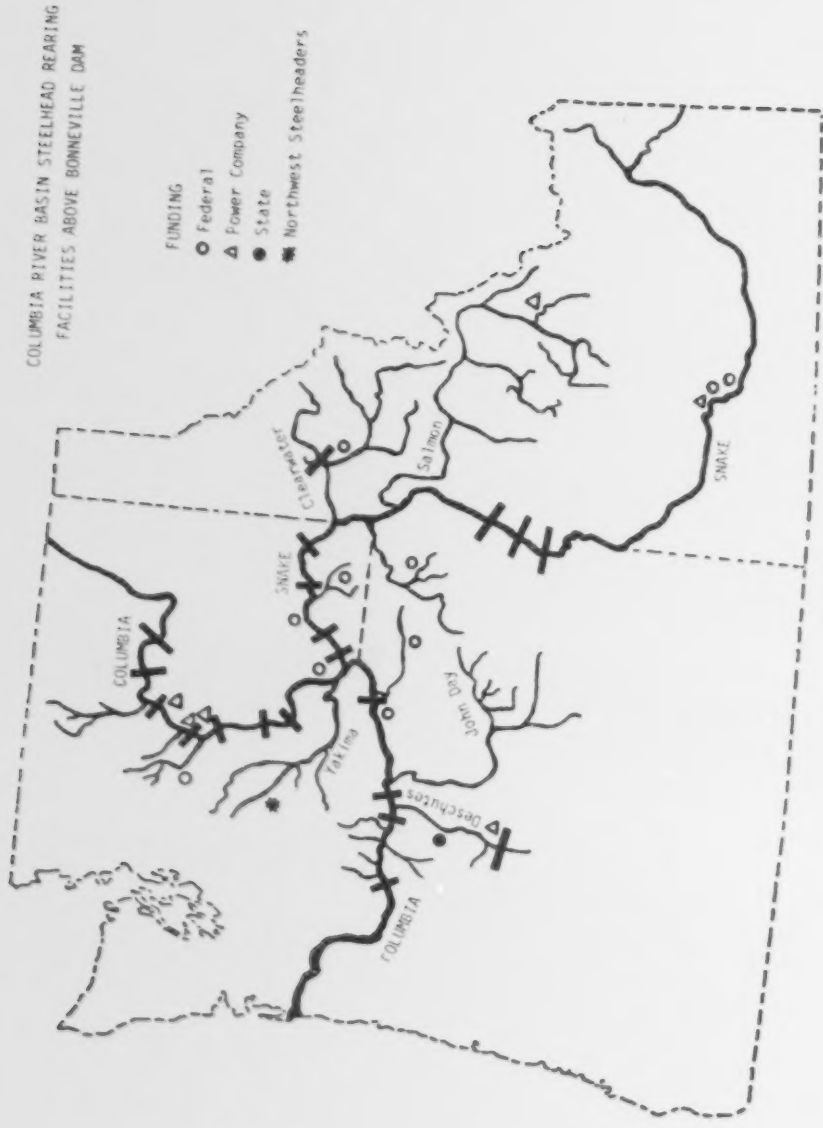


Figure 9
CRITFC 6/85



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

2700 East Burnside Street, Suite 114, Portland, Oregon 97214

Telephone (503) 238-0667

Briefing Paper

THE STATUS OF

1984 -- 1985 COLUMBIA BASIN STEELHEAD RUNS

AND

A RESPONSE TO

IDAHO DEPARTMENT OF FISH AND GAME ALLEGATIONS

AGAINST COLUMBIA RIVER TREATY FISHING TRIBES

June 11, 1985

Commissioners

TRIBES RESPOND TO IDFG ACCUSATIONS

Since last fall the Idaho Department of Fish and Game has been charging that Columbia River treaty tribes overharvested 1984 steelhead runs destined for Idaho. These charges have ranged from the specific allegation that tribal harvests endangered wild steelhead to the sweeping generalization that Idaho steelhead runs were much smaller than expected because of treaty fisheries. The IDFG attacks continued through last fall and winter and have persisted into the spring of 1985 where they finally have focused on the failure of a Salmon River hatchery steelhead run -- an IDFG-created problem for which Columbia River tribes were scapegoated. The paragraphs below, which deal with the 1984 run as a whole, provide background for the Salmon River material that follows:

THE 1984 COLUMBIA RIVER STEELHEAD RUN

The 1984 upper Columbia River summer steelhead count of 314,000 was the largest since counting began in 1938. It exceeds last year's count by 96,000 and the previous ten-year average by 173,000 fish. (The total size of steelhead runs destined for upriver areas are calculated by the count at Bonneville Dam, the first dam on the Columbia and Snake Rivers.)

The number of summer steelhead passing Lower Granite Dam during the 84-85 season was a record 104,273 fish. (The run-size into Idaho is figured by the count at Lower Granite Dam, the last Columbia-Snake system dam that fish must pass before reaching Idaho streams and hatcheries.) The 1984 Idaho steelhead count alone of 91,400 fish exceeds last year's by 9,600 and the 1975-83 average by 52,200. (Lower Granite was built in 1975.)

Based upon estimates of current-year escapements (fish that are not harvested), CRITFC calculates that about 50 percent of the total Bonneville count is a result of Idaho production. Most of Idaho's steelhead are produced in hatcheries funded by the federal government or the Idaho Power Company.

A 1984 sampling program at Bonneville Dam indicated that of the 314,000 steelhead, 22 percent (69,500) were naturally spawning (wild) fish, and 78 percent (244,400) were hatchery fish. A catch sampling program revealed that the treaty harvest was composed of 16% naturally-spawning fish and 84% hatchery fish. The lower proportion of naturally-spawning fish occurring in the commercial fishery as opposed to the Bonneville dam ratios may be due to a larger proportion of B-run fish (the great majority of which originate in the Clearwater River system) harvested in the treaty fishery.

Increased Steelhead Runs

The number of steelhead crossing Bonneville and Lower Granite Dams has increased tremendously in the past several years, and can be largely attributed to additional hatchery production and improved downstream survival (adequate flows, trucking, barging, and spill at mainstem dams).

In addition, the Columbia River treaty tribes agreed in 1977 to not exercise their legal entitlement to a target fishery on steelhead for five years in return for specific allocations of fall chinook, control of ocean harvests, and enhancement of upriver runs. Though the promises of the so-called five-year plan were not fulfilled by the federal and state fishery agencies that signed the agreement, the treaty tribes reduced their harvest of steelhead from approximately 31,800 in 1977 to 3,700 in 1981. This reduction also contributed to increased Idaho steelhead runs.

SALMON RIVER STEELHEAD

After several months of controversy and accusations, it became clear that the conflict had been generated by low 1984-5 steelhead returns to Idaho's Salmon River drainage. Allegations that 1984 treaty Indian fisheries on the mainstem Columbia had overharvested steelhead from a particular Idaho river seemed puzzling, especially in view of the record returns counted at Lower Granite Dam. However, CRITFC learned from IDFG documents on hatchery operations that the failure of the Salmon River run was in fact caused by a severe disease outbreak.

The bulk of Salmon River steelhead runs are produced at Niagara Springs Hatchery and released in the Pahsimeroi River, an upstream tributary of the Salmon. During 1982 and '83, about a half-million smolts reared at the Niagara Springs facility (in the Hagerman Valley) were released at the Pahsimeroi trap. IDFG documents and a 1982 newspaper article (see Appendices 2(a) and (b) and 3) indicate that these fish suffered a very serious outbreak of IHNV virus during their rearing period and demonstrated "considerable deformities" just prior to their release. The IDFG documents further show that these same fish, after release in 1983 from Niagara Springs Hatchery into the Pahsimeroi, had a relative survival rate of only 1.3 percent to Lower Granite Dam according to observations of freeze brands applied to smolts before release.

(Freeze brand observations do not furnish an absolute measure of survival. However when compared with other freeze brand observations, they do provide an accurate measure of relative survival. One of the IDFG documents - a report titled Fish Hatchery Evaluation - Idaho, October 1982-September 1983 - also discusses the release of the same type of steelhead reared in other hatcheries of the Hagerman Valley. These fish did not

suffer an outbreak of IHN virus, and their recorded survival was 22.5 percent at Lower Granite Dam according to freeze brand observations.)

Thus, the majority of fish that would have contributed to the 1984-5 returning steelhead run to the Salmon River were lost before they reached the first dam on their downstream migration.

The Idaho Department of Fish and Game was aware of the severe disease problem affecting Salmon River hatchery steelhead releases, but failed to reveal the problem to state and tribal fishery managers or to the Idaho public during the fall season. Instead, the Department charged treaty fishermen with decimating the Salmon River runs.

Such scapegoating on the part of a fisheries agency is obviously lacking in professional ethics, and IDFG's management decision to release diseased fish from Niagara Springs hatchery must be questioned.

IHN virus is one of the two most serious diseases affecting fish in the Columbia River system. Because IHN is a water-borne virus that can have adverse impact on healthy fish runs, most managers of contaminated hatcheries (there are numerous recent examples) destroy all affected fish and disinfect their hatchery facilities. (See Appendices 4 and 5.)

Idaho's response to these concerns has thus far been to discount them. One IDFG official did so, claiming, "By the time they were released at the Pahsimeroi Hatchery the disease had been cleaned up and they were in fact stronger and a more healthy fish than the smolts released from other hatcheries...." (IDFG commission member Norm Guth, interviewed by The Recorder-Herald March 28, 1985).

Ignoring the fact that IHN killed many of the Salmon River steelhead that would have returned in 1984-5, IDFG still alleges that tribal fisheries overharvested them. Upon further questioning as to how this could be, IDFG revealed its prediction that a majority of the expected 33,500 return in 1984-5 would be from 1982 releases rather than from those of 1983 and that high water temperatures in the Columbia River caused the treaty fishery to disproportionately harvest those fish.

A digression is necessary here: In the Columbia River system, there are two types of steelhead -- A-run fish that cross Bonneville Dam prior to August 26, and B-run fish that cross after August 26. Most Salmon River steelhead are A-run steelhead. Of these A-run fish, some are one-salt (they live in the ocean for one year before returning to their place of release), and according to IDFG, a smaller number are two-salt (two years in the ocean). (See Appendix 6.) The exact ratio is not known, nor is there a method for predicting what that ratio will be.

IDFG claims that what the tribes overharvested from the Salmon River in 1984 were two-salt A-run steelhead from 1982 releases at the Pahsimeroi River. However, as indicated earlier, a prediction that the 1984-5 run would consist mostly of two-salt fish is not supported by any scientific fact. It is based instead on IDFG's theory that a good return of one-salt fish the previous year equates to a good return of two-salt fish the following year from the same release. Appendix 7 consists of a series of charts prepared by an IDFG employee to illustrate this theory. Part of this theory is derived from the ratio of one-salt and two-salt fish returning to the Pahsimeroi River in previous years. However, inspection reveals that the 1983-1984 run used for prediction purposes was an anomaly in comparison to previous years. Therefore the predictive method used failed to maintain a reasonable range of confidence.

Because manipulation of hatchery practices could result in more two-salt fish, IDFG is conducting research to test the theory with smolt releases, but did not begin the research until 1984. Adult returns from this research will occur in 1986 and 1987 (see Appendix 8), at which time scientific findings can be analyzed and conclusions reached. Before completion of the research, however, predictions can only be speculative at best.

Concerning the charge that high water temperatures halted the steelhead in the treaty fishing zone, appendix 9 indicates that the peak steelhead count data at John Day dam is not affected by temperature. In other words, the steelhead runs peak at about the same time in September no matter what temperature occurs in the river.

IDFG also accused the tribes of harvesting many more than the reported harvest as shown in Appendix 1. The allegation was based on counts of steelhead passing Bonneville and McNary dams. Appendix 10 graphically displays the numbers of fish crossing the dams and the accounted and unaccounted numbers between the dams.

Given the release of diseased steelhead and the lack of data on one-salt versus two-salt fish, IDFG used inflated Salmon River run-size estimates without any scientific justification. Thereby, the department also raised the expectations of southern Idaho's sportfishing and business community without any biological basis for doing so.

The accusations and rationalizations described in the above paragraphs are only some of many that IDFG and related Idaho interests have made in recent months to impugn Columbia River treaty fishing tribes.

IT'S TIME FOR A CHANGE

In summary, the Idaho Department of Fish and Game has attempted to blame the Indians for its own failings in controlling hatchery disease and in developing artificial and natural production that best serves state-regulated fisheries and those guaranteed by treaties of the United States. Salmon and steelhead production in Idaho is funded by the United States and the Idaho Power Company to mitigate for damages to fish resources -- resources shared by Indians and non-Indians. Cooperation among diverse groups has led to restoration of a portion of Idaho's anadromous fish runs, but much more cooperation and communication is needed if benefits are to be realized from such recent legislation as the Power Act and Salmon and Steelhead Enhancement Act, and from the recently ratified U.S./Canada Salmon Interception Treaty. False accusations and innuendoes about treaty abrogation are inappropriate responses to real resource issues. The Columbia River Inter-Tribal Fish Commission therefore calls upon the Idaho Department of Fish and Game to cease operating as odd-man-out and begin working with other Columbia River states and treaty tribes to develop a better future for salmon and steelhead resources and the people who depend upon them.

1984 Columbia River Treaty Indian Fishery Summary - Harvest of upper Columbia River destined fish by mainstem Indian commercial fisheries.

<u>NUMBERS OF FISH LANDED</u>				
<u>SUMMER SEASON</u>	<u>DAYS</u>	<u>SOCKEYE</u>	<u>CHINOOK</u>	<u>STEELHEAD</u>
1984	9	25,400	70 jacks	3,200
- - - - -				
<u>FALL SEASON</u>	<u>DAYS</u>	<u>CHINOOK</u>	<u>STEELHEAD</u>	<u>COHO</u>
1984				
Aug. 06-09	3	500	4,700	0
Aug. 13-16	3	700	3,500	0
Aug. 20-23	3	1,400	3,400	0
Sep. 02-06	4	18,900	11,900	200
Sep. 10-14	4	18,400	15,100	500
Sep. 17-21	4	7,600	15,500	300
Sep. 26-Oct. 1	5	4,100	8,500	200
Oct. 09-15	<u>6</u>	<u>1,600</u>	<u>6,100</u>	<u>400</u>
	32 days	53,200	68,700	1,600

FISHERY RESEARCH



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COLUMBIA RIVER
TRIBAL FISH COMMISSION
PORTLAND, OREGON

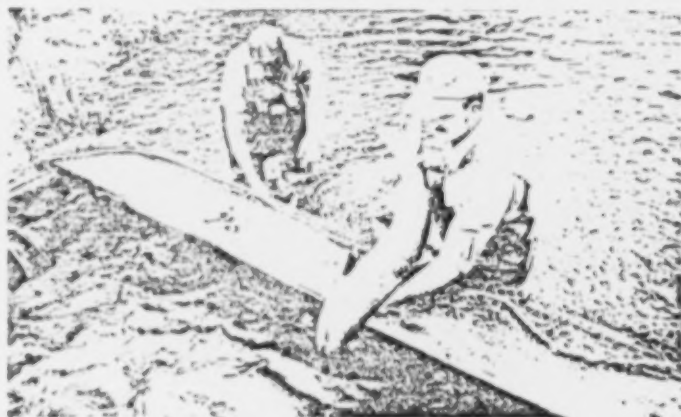
FISH HATCHERY EVALUATIONS - IDAHO

October 1982 to September 1983

Performed for United States Department of the Interior

Fish and Wildlife Service Contract 14-16-0001-832687

Lower Snake River Compensation Plan Office



Fred E. Partridge
Senior Fishery Research Biologist
July, 1984

- Appendix 2a

Steelhead smolt survival rates for HNFH fish released in the upper Salmon River were similar for "large" and "small" group A steelhead, 23.5% and 24.2%, respectively, at Lower Granite Dam. The group B steelhead from HNFH released in the upper Salmon River had a higher survival rate (33.6%) than the two group A steelhead releases. Survival rates for the three branded groups of steelhead from HNFH were considerably higher than the two groups of branded group A steelhead from Niagara Springs Hatchery. These fish suffered a serious outbreak of IHN during their rearing cycle and were in poorer condition than the HNFH fish. The survival rates at Lower Granite Dam for Niagara Springs Hatchery steelhead released in the Pahasimeroi River and at Hells Canyon Dam were 1.3% and 5.5%, respectively.

During 1983, coded-wire tagged summer chinook salmon from 1981 and 1982 releases from McCall Hatchery were trapped in the South Fork Salmon River. Experimental groups in these releases examined the use of a vibriosis vaccine. The two groups released in 1981 which were treated with the vaccine and a placebo showed no differences in returns to the trap at 0.051% and 0.052%, respectively. A control group which received no treatment returned at a slightly higher rate of 0.084%. The jack return from the two groups released in 1982 showed similar return rates for the two marked groups with 0.446% of the vaccinated group and 0.425% of the nontreated group. Although further analysis will be conducted as the adults continue to return in the future, it appears that the vibriosis vaccine does not improve adult returns in the South Fork Salmon River summer chinook salmon.

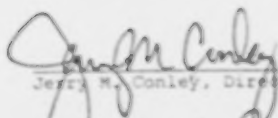
Adult steelhead from smolts reared in test programs at HNFH and released in 1979-1981 in the Pahasimeroi River were trapped in 1983. Coded-wire tagged experimental groups of group B steelhead smolts released in 1979 and 1980 examined the effects of cold conditioning the fish by transporting them from HNFH to holding ponds on the Pahasimeroi River during February. Adult return rates of the test groups at the Pahasimeroi Trap indicate that cold conditioning may be responsible for some improvements in return rates. Cold-conditioned fish released in 1979 and 1980 returned in significantly greater numbers than control groups except for a group of small-size, cold-conditioned fish released in 1980. This small-size, cold-conditioned group had similar return rates as a small-size control group, 0.397% and 0.372%, respectively. The medium-size, cold-conditioned group released in 1980 had return rates twice (0.813%) as large as the small-size groups. The improved survival of the larger fish released in 1979 and 1980 indicate that size of the steelhead smolts at release may be the most important factor.

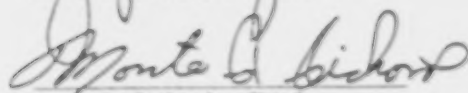
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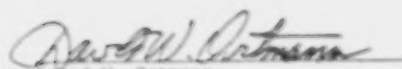
Fred E. Partridge
Senior Fishery Research Biologist

Approved by:

IDaho DEPARTMENT OF FISH AND GAME


Jerry M. Conley, Director


Monte R. Richards, Chief
Bureau of Fisheries


David W. Ortmann
Fishery Research Supervisor

STATE OF IDAHO

DEPARTMENT OF FISH AND GAME

Jerry M. Conley, Director

SMOLT CONDITION AND TIMING OF ARRIVAL
AT LOWER GRANITE RESERVOIR

Bonneville Power Administration Project No. 83-3238

Period Covered: 14 February 1983 to 30 September 1983

by

Richard J. Scully
Fishery Research Biologist

and

Edwin Buettner and Clay Cummins
Fish and Wildlife Technicians

Appendix 2b

Table 13. Continued

Date Sampled 1981	Hatchery	Raceway #	Species	Tot. # fish sampled	Tot. % fish descaled	Mean length (mm)	Standard deviation	Additional Information
4-11	Niagara	9	Steelhead(A)	100	0.00	*231.1		T=58°F; 1.0% area 3 descaling; 2.0% area 4; 2.0% area 5; released Pahsimeroi R.
4-12	Niagara	8	Steelhead(B)	100	0.00	*246.4		T=58°F; 1.0% scattered descaling; 1.0% area 2; 2.0% area 3, released E. F. Salmon R.
3-18, 19	Niagara Freeze Branding SHD "A"							Hells Canyon stock released 4/20/83 (RD 12-4) were in good condition with few deformities from IHN. 3-25/1b; 3/19/83; 3/00/1b; 4/20/43 - released Hells Canyon. Pahsimeroi stock released 4/19/83 (L012-4) had considerable deformities from IHN. 4-2/1b; 3/19/83; 3-4/1b; 4/19/83 - released Pahsimeroi R.
3-10	Pahsimeroi		Chinook	150	5-inch smolts were collected below the ponds & six miles downstream at trap and no sign of descaling observed			
3-14	Rapid River		Chinook	300	0.00			
3-17	Rapid River		Chinook	300	0.00			2.7% scattered
3-18	Rapid River		Chinook	150	0.00			4.7% scattered, released Hells Canyon
4-12	Rapid River		Chinook	600	0.00			2.3% scattered
3-26	Rapid River		Chinook	1 million fish	$\bar{x} = 127.9$ mm			Hells Canyon Fish $\bar{x} = 122.4$ mm
4-18	Rapid River		Chinook	1.9 million fish	$\bar{x} = 130.0$ mm			Rapid River $\bar{x} = 127.9$ mm

*Mean length calculated from number/1b.

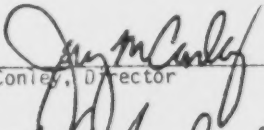
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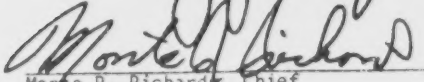
Richard J. Scully
Fishery Research Biologist

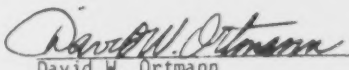
Edwin Buettner and Clay Cummins
Fish and Wildlife Technicians

Approved by:

IDAHO DEPARTMENT OF FISH AND GAME

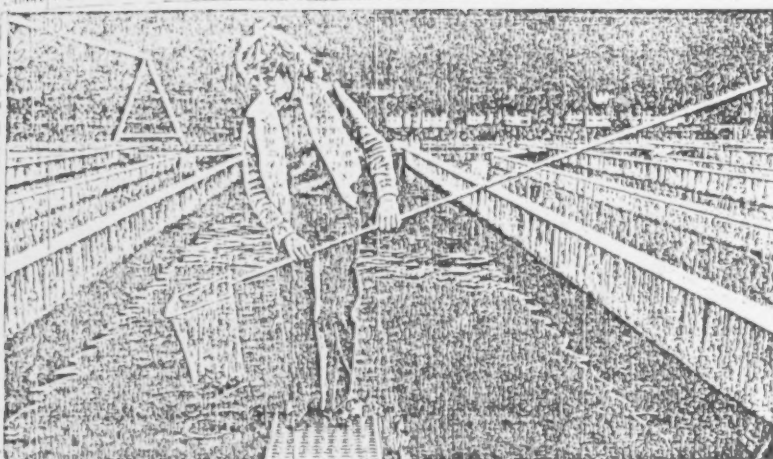

Jerry M. Conley, Director


Monte R. Richards, Chief
Bureau of Fisheries


David W. Ortmann
Fishery Research Supervisor

Tribune
 (CH) D. 24.500
 (CH) Sun 27.800

OCT 8 1982



Tribune/Chris Doran

Colleen Poe, a biological aide at Dworshak National Fish Hatchery, nets some of the surviving steelhead at the federal hatchery. An outbreak of IHN disease has caused the loss of about a million young steelhead, smaller than those below.

Disease may cause reduction in steelhead run

By Bill Loftus
 of the Tribune

Steelhead fishermen of the Snake River will mourn the loss of millions of young fish, a situation which has plagued steelhead hatcheries throughout the Northwest this year.

The loss will especially be noticed in Hells Canyon, where releases of young fish in past years to the Snake River, have built up a sizeable run of the sea-run rainbow trout.

But when next spring comes, only a token release of steelhead smolts is expected for the Snake above the mouth of the Salmon River. The reason is an 85 percent loss of young steelhead at the Bingera Springs Hatchery this summer.

The losses have been caused by a virus-based epidemic known as IHN disease, a killer that biologists readily admit they know of no way to control.

At Dworshak National Fish Hatchery at Kootenai, the disease has claimed more than a million young steelhead — a loss that good fortune will help overcome.

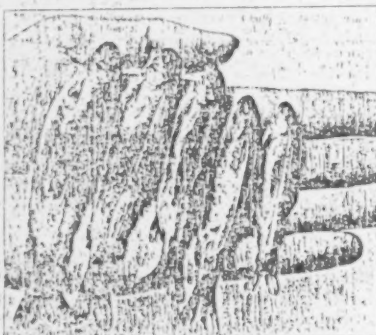
The disease's ravage on the young steelhead bound for release in Hells Canyon will mean that efforts to keep and build on a good run of adults this year will suffer a particularly noticeable setback.

In Hells Canyon, where few tributaries are suitable for natural spawning and the Snake steel supports few wild fish, releases of young fish reared in hatcheries have built up a run estimated to contain several thousand adults this year.

In 1980, some 554,000 young steelhead from the Bingera Springs Hatchery were released in Hells Canyon. Fish from that release make up the bulk of the adults returning this year.

In 1981, 611,000 young steelhead were released and in 1982, 550,000 were released in the Snake River.

Next spring, when this year's crop of young steelhead is scheduled for release, the number



Ningera Springs may be as small as none or as high as 100,000, says John Coon of the Idaho Fish and Game Department at Boise.

"We'll have to wait and see what comes out," says Coon, the department's anadromous fishery manager. Although the Idaho department has responsibility for the Hells Canyon steelhead under a mitigation program linked with Hells Canyon Dam, Oregon may be able to provide some help, he added.

The IHN problem at Ningera Springs is a big headache for young steelheads who are released to the Salmon River. The fish are released in the upper reaches of the Salmon River, where they are expected to survive and grow.

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run is estimated to number in excess of 20,000 steelhead this year.

That has created excellent steelhead fishing on the Salmon this fall for some fishermen, particularly those in boats, with catch rates as low as nine to 10 hours a fish reported.

The relative small number of young steelhead bound for the Salmon system next spring, however, is not expected to have near the effect on the run there.

The Salmon River system, particularly the Middle Fork, still has the capability of producing wild steelhead and those fish will help cushion the run from a drastic drop.

The troubles at Dworshak, where losses to steelhead production have ranged from 15 to 67 percent according to estimates, have been traced down somewhat. The epidemic there has also subsided.

Last year, despite concerns about a small run and a short spring fishing season, the hatchery was able to collect its

That meant there was a surplus of young fish and some were taken to a holding pond at the Kootenai National Fish Hatchery. The fish there are surviving well and disease problems have been minimal.

Those fish were destined to help build wild runs of steelhead in the upper Clearwater River basin.

But they have become the ace in the hole for Dworshak and will instead allow the federal hatchery to meet its production quota. Despite the losses of young fish at Dworshak, the hatchery expects to release about 2.8 million steelhead next spring, a number comparable to last spring's, said Hatchery Manager Wayne Olson of the U.S. Fish and Wildlife Service.

The thing that has biologists worried is that the disease has only recently begun to kill steelhead and no way has been found to control it in the Columbia River system.

This week, biologists from throughout the Northwest are gathering at Portland to trade ideas for next year, which some fear may bring losses as high or higher than this year's.

Joe Lientz, the U.S. Fish and Wildlife Service's fish disease biologist, said the disease has apparently been gaining strength throughout the region for several years. But this year is the first it has been isolated at Dworshak.

"It's not a running little bit scared because you can't control it," Lientz added.

In other steelhead hatcheries, the problem has been much more severe. At the Cowitz, Skamania and Mossy Rock hatcheries there, for example, the Washington Department of Game destroyed entire broods of young steelhead numbering more than a million fish because the disease toll was so high, said Sam Wright, state fishery management chief.

In the past, IHN disease has afflicted primarily West Coast hatcheries rearing sockeye salmon, said Don Mulcahy, a National Fish Research Center

SKANANIA HATCHERY

OCTOBER 1, 1980 - SEPTEMBER 30, 1981

CLOSING REPORT

PRODUCTION

A total of 742,765 fish weighing 112,973 pounds were shipped or planted. Of this, 109,526 fish weighing 20,492 were winter steelhead smolts and 550,886 fish weighing 96,481 pounds were migrant summer steelhead, which includes those fish placed in Gobar Pond.

An additional 431,564 summer steelhead weighing 3,094 pounds and 94,240 winter steelhead weighing 688 pounds were destroyed due to an infestation of I.H.N. (infectious hematopoietic necrosis).

FEED

Clarks Oregon Moist Pellet was the basic diet fed. A dry diet in salmon formula was fed during warm water periods.

Total feed fed was 136,940 pounds of which 23,050 pounds was dry diet.

SPAWNING

Spawning began on December 11, 1980 and was completed February 4, 1981. A total of 6,640,009 eggs were taken from 1,733 females, for an average of 3,832 eggs per fish. All spawning was done by air injection, allowing the fish to be released into the river after spawning.

Four groups of eggs and the resultant fry were kept separate.

- (1) Eggs and fry from fish of Gobar origin as determined by electrophoretic analysis.*
- (2) Eggs from random females² fertilized by random males. This was the largest group and is considered the typical fish.

* To evaluate the impact of the genetic 'mark' we have been using with hatchery summer steelhead on the Kalama River we initiated a short two-year study in 1981. This study required taking eggs from genetically marked adults returning to Kalama Falls Hatchery in the summer of 1980. Adults from Kalama Falls were trucked to Skanania Hatchery where the eggs were taken. Fry were fed for two weeks prior to planting into four tributaries of the Kalama River in April. The egg take and planting records are as follows:

Eggs taken = 35,000
Total fry planted = 15,450

(3) Eggs and fry from the earliest returning adults. Smolts from this group are intended to be released into the North Fork of the Washougal River in an attempt to increase the early returning adults.

—(4)—Eggs from females with a left pectoral fin clip and/or 31-33" long. These eggs were fertilized by males with the same mark or which were 34-36" long. This group represents fish that had spent three years in salt water.

Listed below are the locations receiving Skamania eggs. Included are eggs shipped to Vancouver to be hatched for Skamania.

Vancouver	1,110,972	South Tacoma	254,280
Naches	725,350	Indiana	247,760
Yakima	513,939	Vermont	247,760
Deaver Creek	1,010,240	California	1,017,120
Chelan	176,040	South Carolina	156,480

Total eggs shipped - 5,441,861

ADULT RETURNS

A total of 3,494 summer steelhead were trapped by November 1980. During the trapping period, the trap was closed on three occasions for a total of 50 days, to allow for escapement to the upper river, as it was apparent that enough fish were trapped for anticipated egg requests.

During the summer of 1981, enough fish were being trapped to supply all eggs needed.

Chart 1 below, gives available information on the number of years in salt water for marked releases since 1972.

Chart 2 shows the composition of the 1980 trapped adults according to length and sex for various marks.

CHART 1.

YEAR RELEASED	MARK	NUMBER RELEASED	NUMBER OF YEARS IN SALT WATER				
			1	2	3	4	TOTAL
1972	RT. MAX.	60,000	24	196	236	5	661
1973	RT. PEC.	50,000	37	1,375	178	9	1,599
1974	LF. PEC.	25,000	24	304	18	5	351
1975	LF. VENT.	15,000	15	581	21	1	618
1975	LF. VENT. AD	15,000	12	537	26	1	576
1976	RT. PEC.	33,000	152	1,399	105	13	1,695
1976	RT. PEC. AD	25,055	25	614	34	2	675
1977	LF. PEC.	26,976	4	471	64		539
1978	LF. VENT.	25,900	5	512			517
1979	NO MARKED FISH RELEASED THIS YEAR						

The above fish were marked for the following purposes:

RT. VENT. - 1976 identify as Gobar stock.

LF. VENT. AD - 1975 control not fed terremycin.

LF. VENT. - 1975 fed terremycin.

Balance of marks to identify offspring of large parents.

DISEASES

A major infestation of I.H.N. (infectious hematopoietic necrosis) occurred at the Skamania Hatchery during 1981. Fry in the hatchery began dying the first of May with fingerling in the raceways following by three weeks. All juvenile steelhead on the hatchery were destroyed by June 15. Total fish lost including the mortality from the disease exceeded 667,000 fish and 2,700 pounds.

As a result of this out-bred fish holding facilities were disinfected and all lumber that might have been contaminated was destroyed by burning and replaced.

Replacement fish from other Game Department hatcheries were brought in starting on July 21.

A wild out-bred of trichinellosis occurred in February. During the late summer a few fish were infected with columnaris. These diseases responded well to conventional treatment.

GENERAL

The occurrence of I.H.N. in May destroyed what had been the start of a very good year for the hatchery.

Winter weather was mild, enabling smolts to reach a larger than normal size. Average size was 5.8 fish per pound for the 1981 release, which compares with 7.1 for 1980 and 7 for 1979.

Egg production was much advanced over previous years, due to the warmer water. Egg quality was very good. The percent of eggs lost through the eyeing stage was 3%.

The number of adults returning early in the spring was largest in recent years, with fish appearing in March.

The majority of the time this past summer was spent rebuilding items that had to be destroyed with the disinfection of the hatchery. It is hoped that the destruction of infected fish, disinfecting the hatchery and revised spawning methods will curb a recurrence of I.H.N.

As has become the normal operation, eggs are sent to the Vancouver Hatchery for hatching and starting of the fry. It has been through this means that all fingerling can reach smolting size in one year. The quality and quantity of water at the Vancouver Hatchery is deteriorating yearly. Some lots of fry held at Vancouver had losses in excess of 40% this past year. It is very important that another means of getting more rapid hatching and starting of our fry be found. Possible alternatives are a hatchery building located on a warmer water source, or a means of heating water at Skamania.

With the development of housing along the Washougal River and its tributaries, the importance of this hatchery and its contribution to the steelhead returns is vital. Due in part to this development and increased poaching, the number of native fish is diminishing. Hatchery operation is also being affected with fish being stolen and snagged. A means of securing our fish with an alarm system is becoming a growing need.

Anchorage, Alaska,
News
(Cir. D. 14,543)

MAR 6 1985

Alaska P. C. B. Est. 1983

Eklutna Lake hatchery destroys 2 million diseased salmon fry

By RONNIE CHAPPELL

Daily News reporter

More than two million disease-infected salmon fry were destroyed Tuesday at the Eklutna Lake hatchery, wiping out a year's production of chum and king salmon.

According to Tom Mears, executive director of the Cook Inlet Aquaculture Association (CIAA), the fish contracted a contagious "viral" disease known as Infectious Hematopoietic Necrosis (IHN).

The infected fish — two million chum salmon fry and 40,000 king salmon fry — were poisoned with chlorine bleach and then incinerated to prevent spread of the disease to wild stock.

Hatchery managers are awaiting test results on 400,000 pink fry and 150,000 silver fry, Mears said. Mears is not optimistic the pinks will survive either.

The silvers, which are generally immune to IHN, have a

good chance of making it, he said.

CIAA completed and began operation of the \$1.8 million Eklutna Lake hatchery — a facility underwritten by local commercial fishermen — in 1983. A four-year research effort preceded construction of the facility.

"This is the sixth year we've grown fish there and we've never seen an epidemic

See Back Page, DISEASE

Diseased salmon fry destroyed at hatchery

Continued from Page A-1

like this before," Mears said.

High fry mortality rates alerted hatchery managers to a possible problem, Mears said. A pathologist with the Alaska Department of Fish and Game screened the fish for viral infection after tests proved negative.

Mears doesn't know how the disease got into the hatchery. He is confident, however,

that wild fish are the source of the rogue virus.

"Every sockeye (red) salmon population has numerous carriers of IHN," Mears said, "and every place we went to get chum eggs, there were sockeyes there also."

The water supply at the hatchery could also be contaminated. The facility pulls water from Eklutna Lake, which is stocked with landlocked red salmon.

After the sale of hatchery's

pink stocks is determined, "we will sterilize or disinfect the hatchery," Mears said.

According to Mears, destruction of the salmon will cost Cook Inlet commercial fishermen \$450,000 in lost fishing opportunity over the next eight years. It will cost the aquaculture association, which plans to harvest and sell returning fish to cover the hatchery's operating expenses, a similar amount.

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17 ATTORNEYS FOR PETITIONER FOR
18 INTERVENTION

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE DISTRICT OF OREGON

21 UNITED STATES OF AMERICA,	)	
	)	
22 Plaintiff,	)	Civil No. 68-513
23 vs.	)	
24 STATE OF OREGON and STATE OF	)	AFFIDAVIT OF HERBERT A. POLLARD, II
25 WASHINGTON,	)	
26 Defendants,	)	
27 THE CONFEDERATED TRIBES and BANDS	)	
OF THE YAKIMA INDIAN NATION, THE	)	
CONFEDERATED TRIBES OF THE WARM	)	
SPRINGS RESERVATION OF OREGON,	)	
CONFEDERATED TRIBES OF THE	)	
UMATILLA INDIAN RESERVATION, and	)	
THE NEZ PERCE TRIBE OF IDAHO,	)	
	)	
Plaintiff-	)	
Intervenor	)	
and	)	
STATE OF IDAHO,	)	
	)	
Applicant for	)	
Intervention	)	

AFFIDAVIT OF HERBERT A. POLLARD, II - p. 1

- Appendix.6

and spawning migrations which range from 450 to 950 miles. During their migrations they are commingled with other Columbia River stocks as they migrate through the ocean and the Columbia and Snake rivers.

8. The stocks of summer steelhead returning to the Clearwater, Salmon and Snake rivers of Idaho are composed of two distinct groups. The group A steelhead pass Bonneville Dam primarily from July through late August and are destined for the Snake and Salmon rivers. The group B steelhead pass Bonneville principally from late August through October and are destined primarily for the Clearwater drainage. The majority of group A steelhead spend one year in the ocean and return to the rivers at weights of 4-6 pounds. Some group A steelhead spend two years in the ocean and average 8-10 pounds. The majority of group B steelhead spend two years in the ocean and return to the rivers at weights of 10-20 pounds.

9. Snake River group B steelhead returns reached a record low with the 1974-75 run estimated at less than 4,000 steelhead over the upper Snake River dams. The Snake River group A steelhead reached record low numbers in both 1974-75 and 1975-76 when only about 10,000 steelhead escaped over the uppermost Snake River dam. This reduction in numbers was primarily the result of dam passage losses.

10. Since 1975, the total return of Snake River steelhead has risen significantly due to a positive response to smolt transportation

JIM JONES

Attorney General
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1934 I-oc. highway to Salmon R.

Angler harvest - 12,200

Chisimere's Cont.

11,800

23,500 (99%)

Total

Expected 1985 I-oc. = 27,500 (51%)

Estimated 1985 I-oc. = 4,500

Unaccounted - 20,000 I-oc. fish

Expected Hatchery Run Fall 1984 - Spring 1985

II-ocean - 24,500
 I-ocean - 9,000

 Total - 33,500

Estimated actual run

II-ocean - 4,500
 I-ocean - 3,000

 Total - 7,500

FISHERY RESEARCH



RECEIVED

MAR 19 1984

COLUMBIA RIVER RIVER
TRIBAL FISH COMMISSION
PORTLAND, OREGON

Evaluation of Transplanting Snake River
Steelhead Trout to the Pahsimeroi River, 1982

Performed for Idaho Power Company
Project IPC-26

Period Covered: 1 July 1981 to 30, June 1982



Kent Ball
Senior Fisheries Research Biologist
January, 1984

- Appendix 8

the fall of 1981 and fish caught was 86% higher. Even though it was legal to keep wild fish upstream from Long Tom Creek, few were caught and most of those were released. The proportion of hatchery fish caught was 97%.

Of the 42 wild steelhead we checked at North Fork, only 3 were trophy-size fish from section 4. On the average, about 16.6% of the fish caught from section 4 are checked at the North Fork check station. Using this proportion yields an estimate of 18 trophy-size wild fish caught from section 4 in the fall season. The special regulations included 22 miles of section 3 as well as the 65 miles of section 4. If the catch rate of trophy size fish from section 3 was the same as in section 4, I estimate the total harvest of 24 wild fish from the river reach with special regulations. This estimate does not include fish taken illegally.

Fall Hatchery Return

Steelhead usually do not enter the adult collection facility in the fall. Since 1969, only two steelhead returned to hatchery in the fall, i.e. in 1976. Four steelhead entered the Pahsimeroi trap in October 1982. They were all II-ocean fish. We jaw-tagged these three females and one male and released them back into the Salmon River at the mouth of Spring Creek on 18 October. One tag was turned in at the North Fork check station the following weekend. No further returns were reported from the fishery or hatchery rack.

Fry Plants

After the amount of eggs were taken to meet the requirements of the hatchery program at Niagara-Pahsimeroi and other commitments, excess adult steelhead were spawned. The resulting eggs were hatched at the Pahsimeroi station and the swim-up fry released in various streams in the upper Salmon River (Table 9). This is part of an attempt to enhance the naturally spawning runs in the area by distributing steelhead in presently under-utilized streams.

Pending Research

The majority of the steelhead that have returned to the Pahsimeroi adult collection facility have spent a single winter in the ocean. Recent returns seem to indicate a shift toward an additional winter of ocean life before returning to spawn. The degree of heritability of ocean age is unknown for upriver summer steelhead. And, we do not know if ocean age is a sex-linked trait.

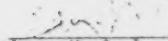
In the spawning run of 1983, our plans are to conduct test crosses of known-age females with known-age males. Smolts from these test lots will be tagged with coded wires prior to release. Adult returns from the test lots will return in 1986 and 1987.

Submitted by:

Kent Ball
Senior Fisheries Research Biologist

Approved by:

IDAHO DEPARTMENT OF FISH AND GAME

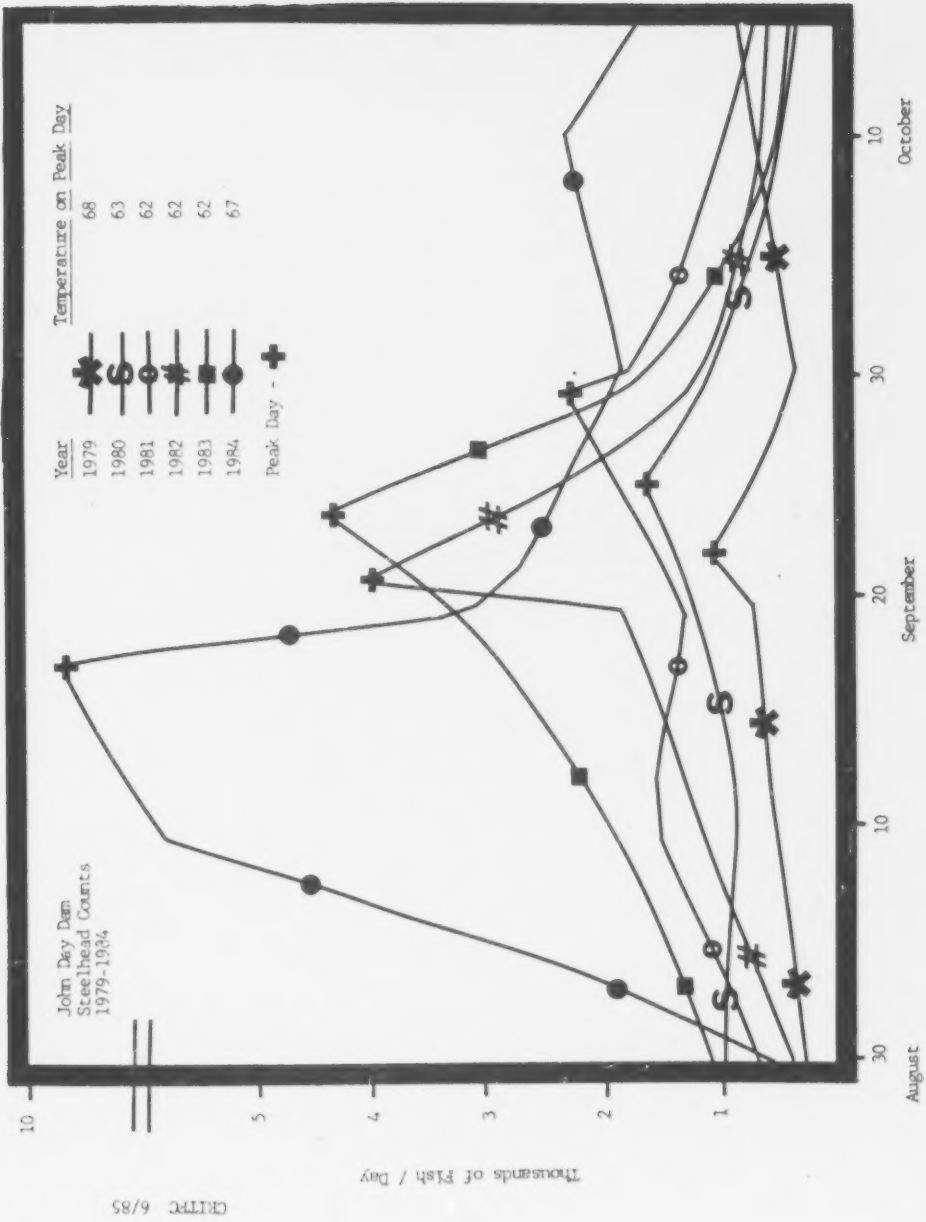

Jerry M. Conley, Director


Monte R. Richards, Chief
Bureau of Fisheries


David W. Ortmann
Fishery Research Supervisor
Bureau of Fisheries

Steelhead Peak Day Counts and Water Temperature at John Day Dam,
1979-1984.

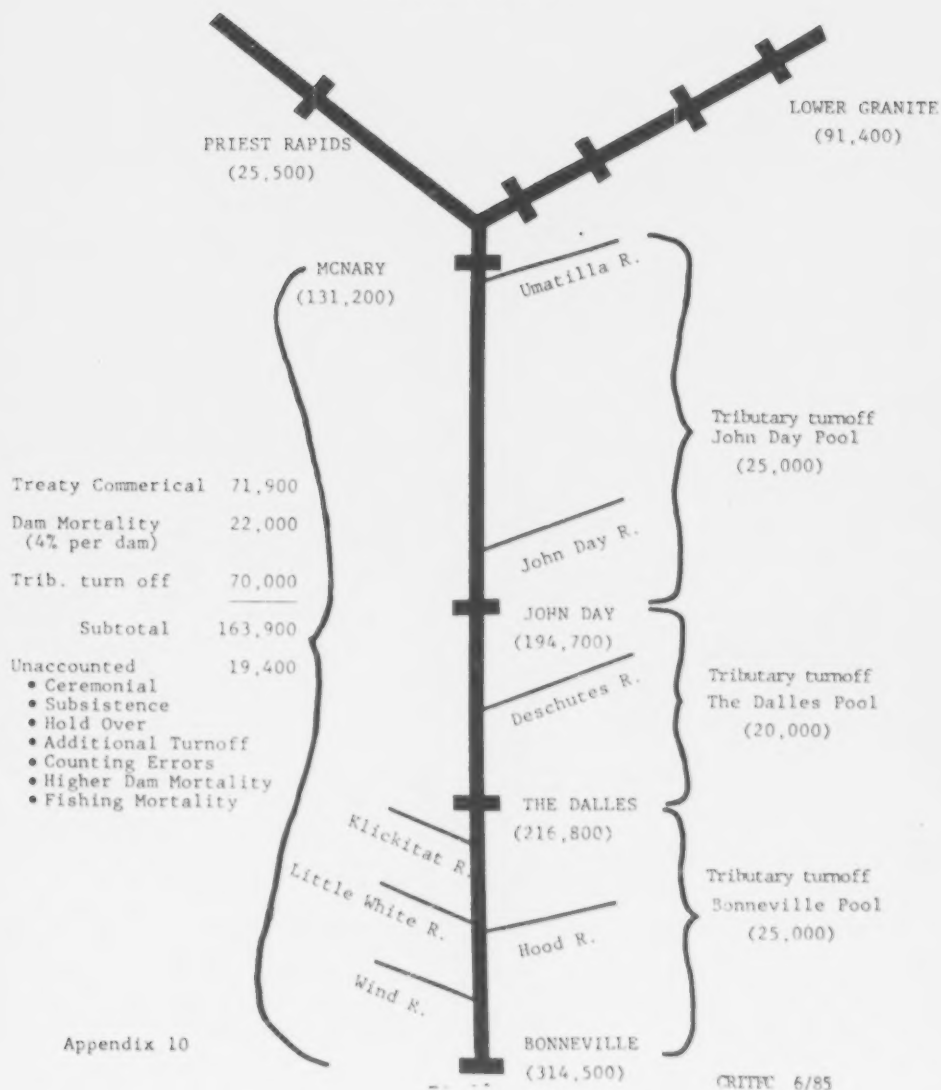
<u>YEAR</u>	<u>DATE</u>	<u>COUNT</u>	<u>TEMPERATURE</u>
1979	Sept. 22	1,019	68 degrees
1980	Sept. 25	1,657	63 degrees
1981	Sept. 29	2,341	62 degrees
1982	Sept. 21	4,122	62 degrees
1983	Sept. 24	4,283	62 degrees
1984	Sept. 17	8,788	67 degrees



CRTRC 6/85

COLUMBIA RIVER UPRIVER SUMMER STEELHEAD - 1984

Where Did They Go ?



STATEMENT, N. KATHRYN BRIGHAM BEFORE THE SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS REGARDING

S. 954

WASHINGTON, D.C.

JULY 11, 1985

My name is N. Kathryn Brigham. I am a member of the Umatilla Fish and Wildlife Committee and the Columbia River Inter-Tribal Fish Commission.

I am here today to say once again that our Treaty Rights are not for sale, therefore, I oppose S. 954 in its entirety. From the very beginning, our people have relied on the resource for our livelihood. That is why our tribal leaders made sure that there was language in our treaties to protect them. Yet since the Treaties were signed and ratified by Congress, we have had to continually fight for them. Why is that?? We have heard over and over again that the United States is an honorable nation: A nation that keeps its word. Yet the livelihood of our people is at stake today with this bill.

Nine years ago, we, the Columbia River Treaty Tribes, were willing to negotiate with the States of Oregon and Washington on chinook and steelhead. At that time, we signed a court-approved management scheme, the Five-Year Plan, to limit our commercial fishery on steelhead. In return, the States and Federal government committed themselves to improve certain salmon runs to make up our losses. The Tribes stood by their agreement even though the salmon harvest continued to decline.

The Five Year Plan has long since expired. The goals for the plan were not met, but the states of Oregon, Washington, and Idaho as a limited party are working in cooperation with the Tribes to reach an agreement on management, production, and harvest strategies of Columbia River salmon and steelhead stocks. The objective is to insure a fair share of the harvest, ocean and in-river to both the Tribes and non-Indian user group.

We kept our word, yet you are again offering us legislation that would break your pledge and take away an important source of income for our people.

I believe that past management of the Columbia River primarily for steelhead sport fisheries has contributed to the decline of salmon runs in the Columbia system. In management for steelhead as an exclusive game fish, many millions of eggs of salmon that run concurrently with steelhead were transferred to other river systems. This practice has reduced those salmon

STATEMENT OF N.KATHRYN BRIGHAM
PAGE 2

species. These transfers may have reduced the catch of steelhead by Indian fishermen, but they also virtually eliminated some of the salmon runs to which the Tribes are entitled.

Steelhead are the strongest runs of all the salmonids in the Columbia Basin. Although in some cases the natural runs of these fish have declined since the 1950's, it has not been due to overfishing. Habitat loss, power dams, and failure to use the hatchery facilities to replace the lost runs are the primary reasons for the reduction of natural steelhead runs.

To increase the natural runs, the Nez Perce, Warm Springs, and Umatilla Tribes now have steelhead rearing facilities on their reservations. There are plans to build more of these facilities on the Nez Perce, Umatilla, and Yakima Reservations. The Umatilla Tribe is planning a steelhead hatchery. Additionally, the Tribes have taken the lead, on and off the reservations, to increase the natural production of steelhead.

Our Tribes have always supported the protection of habitat for steelhead and salmon. We are involved in environmental protection and planning from the headwaters to the mouth of the Columbia River, and out into the Pacific Ocean. We continue to believe that the protection and restoration of natural habitat is paramount to the survival of the salmon and steelhead resource. We have worked steadily toward that goal.

Of particular concern to the Tribe is the uncontrolled destruction of limited resources. Forest and agricultural management, energy production, and urban sprawl continue to take priority for limited short term gain over long term resources like salmon and steelhead. S. 954 will not offer a solution to complex regional problems which must be solved before the survival of steelhead and salmon can be assured.

Many people have been led to believe that sport license fees pay for the production of hatchery steelhead. This is not true. Hatcheries and rearing ponds have been funded almost entirely by public and private power companies and the federal government to compensate for destruction of fisheries lying mainly in ceded areas, fisheries which our treaties specifically protect.

Supreme Court Justice Hugo Black once said, "Great Nations, like great men, should keep their word". Treaties are the nation's word.

Senator GORTON. Thank you very much for a very, very good statement.

Mr. PINKHAM. I would like to turn it over to any other members who would like to make a comment.

Senator GORTON. Yes. If others have comments or statements, I would be happy to hear them. Would each of you identify yourself as you begin?

**STATEMENT OF LEVI GEORGE, VICE CHAIRMAN, COLUMBIA
RIVER INTER-TRIBAL FISH COMMISSION**

Mr. GEORGE. Thank you, Senator Gorton. My name is Levi George. I am a Yakima Tribe councilman, fish and wildlife commerce secretary, and also Columbia River Inter-Tribal Fish Commission vice chairman.

As you look around this building, you know there are people quite concerned about the resource. You can understand the tribes' concern. I don't have anything in writing, but it comes out of my heart what I feel about, as Senator Evans indicated, this God-given thing. That's the way I feel about the whole issue.

Throughout our country, throughout the United States, the resources that were given to us to use by the Creator, that includes all the things that are on this Earth—timber, water, all the animals and all the fish in the streams and the rivers—you know that was given to the Indians in this country, as you were given your food in your country which is very important to you. You know the bill S. 954 does not go along with the things that were promised by your people and my people when the treaty was made.

My people have lived in this country for thousands of years; lived as other speakers have explained in the hope that you would understand. The steelhead that we are talking about has been our food. As one of the coastal tribes indicated, it's a year-round food. The other species come and go at certain times in the years.

We are talking about decommercialization. Steelhead we have bartered with the other people before the white man came to our country. We dried it, smoked it, cured it in various ways and bartered, traded it for other needs—buffalo meat and elk meat, roots and berries. That's just how important that food is to us, as other fish in the river.

With this bill, my way of looking at it and understanding it, it would shame your people with the promises that were made to my people, I believe it would shame my people also as well with the promises that were made by you. Two respected parties negotiated; you got the majority of the land. The richness of this Earth gave you the wealth, and the Indian people, the original owners of all this land, suffered greatly because some of the resources are depleted and damaged.

Now we are fighting over steelhead. It is really good to hear that the steelhead is coming back again because of the cooperation between the tribal, Federal, and State governments. I hope that we continue to work together. As I have stated back in 1976 in one of my testimonies in Los Angeles, at that time I was trying to get the people to understand I think it is time that we have better regulations in the ocean fishery as well as the rivers.

I have this much to say, and I want to add a little bit on our ceremonial fishing. You know that ceremonial fishing is very important to the tribe. Each year I know in different areas tribes have different ways of doing things, but in the Columbia River each spring when the spring fish arrive we go out and catch the fish and have big feasts. We do not charge anyone, and everybody is always welcome to our feast. Some people ask, "Do you worship the fish?" It's not that way, Senator. We thank the Creator for giving us of that food which we eat, salmon, deer, roots, and berries, and water.

This much I can explain to you, to make you understand better. You ask, on the numbers, how many fish we use for our ceremonial fish. For the four tribes in the Columbia River we have 2,000, which is not enough for four tribes. This much I tell you, Senator, so maybe you can have a little understanding. Thank you.

Senator GORTON. Mr. Culpus.

STATEMENT OF HAROLD CULPUS, CHAIRMAN, FISH AND WILDLIFE COMMITTEE OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS INDIAN RESERVATION OF OREGON

Mr. CULPUS. Senator Gorton and other members, I am certainly glad to be here to present the Warm Springs Confederated Tribes' concerns.

Senator GORTON. Would you state your name?

Mr. CULPUS. My name is Harold Culpus. I am the chairman of the Warm Springs Fish and Wildlife Committee and I am speaking today on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon, in opposition to Senate bill 954, the so-called Steelhead Trout Protection Act. With me I have the vice chairman of the tribal council, Delbert Frank, Sr., and the traditional chief of the Warm Springs Tribe, Delvis Heath, who is sitting back there.

Senate bill 954 is the same bill that was introduced in 1981. We opposed the 1981 bill and we oppose this bill. As is often the case, the name of this bill has nothing to do with its purpose. The Steelhead Trout Protection Act does not protect steelhead. Instead, it reallocates a portion of the steelhead harvest from the treaty Indian fisherman to the non-Indian sportsmen. The bill accomplishes that by abrogating treaty Indian fishing rights for steelhead.

The Warm Springs Tribe holds off-reservation fishing rights reserved in the treaty of 1855 with the Tribes of Middle Oregon. We are, therefore, one of the several dozen Pacific Northwest tribes whose treaty rights would be abrogated if this legislation becomes law. It is the firm and unwavering belief of the Warm Springs people that there is not now, never has been, and never will be any justification for a unilateral abrogation by the U.S. Congress of all or any part of our 1855 treaty.

The treaty is the foundation of our existence. It is our guarantee of survival as a separate and sovereign people. Accordingly, we will do everything in our power and use every resource available to us to defeat legislation aimed at revoking the historic bargain struck between the Warm Springs people and the United States.

Another reason this bill should be defeated is that it is totally unnecessary. The bill claims to protect steelhead. However, they are receiving all the protection they need. How else do you account for the fact that steelhead runs in the upper Columbia River and its tributaries have reached recordbreaking levels in the last several years and are expected to get even bigger? These runs are getting larger even though the fish must pass through the treaty Indian commercial gill net fishery, non-Indian sports fishery, and tribal subsistence fishery, both on the mainstem and on the tributaries. With steelhead runs into the upper Columbia River the size we are now seeing, it is obvious that Columbia River steelhead will not need S. 954 to ensure their continued existence. The fish are doing quite nicely without it.

In our 1981 testimony we pointed out the success the Warm Springs Tribe has had in comanaging the very important Deschutes River summer steelhead run with the State of Oregon. We pointed out in 1981 that the non-Indian sports catch of the Deschutes River steelhead during most of the period between 1970 and 1980 was the largest in Oregon, ahead of more than 90 other steelhead-producing streams. Since 1981, the Deschutes River summer steelhead run has grown even larger. The 1983 steelhead run was believed to be the largest on record.

The current success and excellent future of the Deschutes River steelhead run is the result of close cooperation between the Warm Springs Tribe and the State of Oregon. The major production of Deschutes River steelhead occurs on the Warm Springs Indian Reservation. The wild fish spawn in the Warm Springs River, Shitike Creek, and the Deschutes River bordering the reservation. The hatchery fish come from the Round Butte Hatchery on the Deschutes River where it forms the reservation's eastern boundary. The tribe and the State also share the harvest of Deschutes River steelhead. In recent years tribal members and non-Indian sportsmen on the Deschutes have harvested roughly equal shares of the steelhead resources. Even then, the non-Indian sports catch is one of the largest in Oregon.

I point out the success we have had with cooperative tribal-State management on the Deschutes River for two reasons. First, by working together instead of fighting one another, the tribe and the State have built one of the largest and most successful treaty and nontreaty steelhead fisheries in the Pacific Northwest. Second, our experience with the State in comanaging the steelhead resource for the benefit of both treaty and non-treaty fishermen shows that the two groups do not always have to be in conflict.

The Warm Springs Tribe firmly believes that if all parties interested in protecting and preserving the steelhead resource work together to restore the habitat and enhance the resource, there will be plenty of fish for everyone. Senator Gorton and committee members, if you agree with this approach, which we believe is the only sensible approach, you will let this bill die here and now so that we can get on with the important business of coordinating our efforts to protect and enhance the steelhead resources.

That is the end of the statement. I read in parts and left some out.

[Mr. Culpus' prepared statement, on behalf of the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, follows:]

TESTIMONY OF HAROLD CULPUS

ON BEHALF OF

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION

OF OREGON BEFORE THE SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS REGARDING SENATE BILL 954

JULY 11, 1985

WASHINGTON, D.C.

Senator Gorton and members of the Committee, my name is Harold Culpus. I am chairman of the Warm Springs Fish and Wildlife Committee and am speaking today on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon in opposition to Senate Bill 954, the so-called Steelhead Trout Protection Act.

Senate Bill 954 is the same bill that was introduced in 1981. We opposed the 1981 bill and we oppose this bill. As is often the case, the name of this bill has nothing to do with its purpose. The Steelhead Trout Protection Act does not protect steelhead. Instead, it reallocates a portion of the steelhead harvest from treaty Indian fisherman to non-Indian sportsmen. The bill accomplishes that by abrogating treaty Indian fishing rights for steelhead.

The Warm Springs Tribe holds off-reservation fishing rights reserved in the 1855 Treaty with the Tribes of Middle

Oregon. We are, therefore, one of the several dozen Pacific Northwest tribes whose treaty rights would be abrogated if this legislation becomes law.

It is the firm and unwavering belief of the Warm Springs people that there is not now, never has been and never will be any justification for unilateral abrogation by the United States Congress of all or any part of our 1855 Treaty. The Treaty is the foundation of our existence. It is our guarantee of survival as a separate and sovereign people. Accordingly, we will do everything in our power and use every resource available to us to defeat legislation aimed at revoking the bargain struck between the Warm Springs people and the United States Government in 1855.

In short, the Warm Springs Tribe opposes SB 954, first and foremost because it would destroy a right we have held as a people since time immemorial and which we reserved for our use in perpetuity in the Treaty of 1855. There can be no defensible justification for such a taking, and certainly the Steelhead Trout Protection Act offers none. For that reason alone SB 954 must be defeated.

Another reason this bill should be defeated is that it is totally unnecessary. The bill claims to "protect" steelhead, yet the undisputed biological data show that steelhead are receiving all the protection they need. How else do you account for the fact that the steelhead runs into

the upper Columbia River and its tributaries have reached record-breaking levels in the last several years, and are expected to get even bigger? These runs are getting larger even though the fish must pass through the mainstem treaty Indian commercial gillnet fishery and non-Indian sports fisheries and tribal subsistence fisheries both on the mainstem and on the tributaries. With steelhead runs into the upper Columbia River the size we are now seeing, it is obvious that Columbia River steelhead do not need SB 954 to insure their continued existence. The fish are doing quite nicely without it.

In our 1981 testimony, we pointed out the success the Warm Springs Tribe has had in co-managing the very important Deschutes River summer steelhead run with the State of Oregon. We pointed out in 1981 that the non-Indian sports catch of Deschutes River steelhead during most of the period between 1970 and 1980 was the largest in Oregon, ahead of more than ninety (90) other steelhead producing streams.

Since 1981, the Deschutes River summer steelhead run has grown even larger. The 1983 steelhead run was believed to be the largest on record. It is important to note that this record-breaking run reached the Deschutes River after passing through the mainstem Columbia River treaty Indian commercial gillnet fishery which, in 1983, was fishing without the eight inch mesh restriction for the first time since the

mid-1970's. Obviously, dropping the eight inch mesh restriction, which increased the commercial take of steelhead, had no adverse effect on the Deschutes River steelhead run. The 1984 run was slightly lower than 1983, largely because of fewer Idaho-origin strays entering the Deschutes River. This year's run is expected to be similar to the 1984 and 1983 runs.

The Deschutes River steelhead resource, which is in the best shape of historic times, should be made even stronger by two new enhancement projects. The Oregon Department of Fish and Wildlife in cooperation with the Warm Springs Tribe is planning projects to introduce summer steelhead stocks into previously unseeded areas of the White River and Trout Creek, two tributaries of the Deschutes River. If these projects go forward as expected, another 3,000 to 4,000 steelhead spawners will be added to the Deschutes River run.

The current success and excellent future of the Deschutes River steelhead run is a result of close cooperation between the Warm Springs Tribe and the State of Oregon. The major production of Deschutes River steelhead occurs on the Warm Springs Indian Reservation. The wild fish spawn in the Warm Springs River, Shitike Creek and the Deschutes River bordering the Reservation. The hatchery fish come from the Round Butte Hatchery on the Deschutes River where it forms the Reservation's eastern boundary. The Tribe

and the State also share the harvest of Deschutes River Steelhead. In recent years, tribal members and non-Indian sportsmen on the Deschutes have harvested roughly equal shares of the steelhead resource. Even then, the non-Indian sports catch is one of the largest in Oregon.

I point out the success we have had with cooperative Tribal-State management on the Deschutes River for two reasons. First, by working together instead of fighting one another, the Tribe and the State have built one of the largest and most successful treaty and non-treaty steelhead fisheries in the Pacific Northwest. Second, our experience with the State in co-managing the steelhead resource for the benefit of both treaty and non-treaty fishermen shows that the two groups do not always have to be in conflict.

The Warm Springs Tribe firmly believes that if all parties interested in protecting and preserving the steelhead resource work together to restore the habitat and enhance the resource, there will be plenty of fish for everyone. Senator Gorton and Committee members, if you agree with this approach, which we believe is the only sensible approach, you will let this bill die here and now so that we can get on with the important business of coordinating our efforts to protect and enhance the steelhead resource.

Thank you very much.

Senator GORTON. Thank you. The whole statement will be included in the record, and we thank you very, very much, Mr. Culpus. Is there anyone else who has a formal statement?

STATEMENT OF DELBERT FRANK, VICE CHAIRMAN, WARM SPRINGS TRIBAL COUNCIL

Mr. FRANK. Mr. Chairman, my name is Delbert Frank, the vice chairman of the Warm Springs Tribal Council. I don't have any written statement but I would like to make a comment that really concerns me. That is that I have spent about 30 years of my lifetime working with water and fisheries management for my tribe and in the Columbia River. I would hate to think that we are going to go start all over again and start worrying and doing the same thing that we have done in the past 30 years of my time. I don't really feel I have the energy, nor do I have dollars to support me to go and do it all over again. It is very discouraging, I might note, that I think that we are going to do this because that's what it seems to be, going backward and doing the job all over again.

I think the other thought I have is that I think the comanagement between Indians and non-Indians is really the only way out. I think that's the way we have to go. I think it is proving out throughout the Northwest streams, that it is successful, and I can see no other way out, Mr. Senator. That's my feeling. Thank you.

Senator GORTON. Thank you. Thank you very much, Mr. Frank. Mr. Pinkham, is that everyone?

STATEMENT OF TOM ELI, TRIBAL COUNCIL MEMBER, YAKIMA INDIAN NATION

Mr. ELI. Good morning, Mr. Chairman, my name is Tommy Eli. I have certain responsibilities as an elected official of the Yakima Tribe. In the short tenure that I have been with the council, it appears to me that it's 100 years plus, but the senseless waste of money and time concerning this bill in an attempt to remove a right, granted by the treaty, which the Creator has placed on this Earth for our people, we the Yakimas feel the Creator is the only authority to abrogate that right.

Our people not only use the steelhead as a means of income but also as a means to cure our food, along with the chinook salmon. The statement has been submitted. I don't think I need to add any more than the short, brief statement or comment that I have made in addition to the statement. Thank you.

Senator GORTON. Thank you.

[Mr. Eli's prepared statement follows:]

PREPARED STATEMENT OF TOM ELI, TRIBAL COUNCIL MEMBER, YAKIMA INDIAN NATION

Mr. Chairman, my name is Tom Eli and I am an elected member of the Tribal Council of the Yakima Indian Nation. I am also a member of the Fish and Wildlife Committee and the Cultural Committee of that Council. Like this Congress our Tribal Council is divided into a committee system with each member assigned to a committee jurisdiction within his or her area of expertise. My entire life has revolved around the culture of my people and the fishery resource on which we depend.

I come here today with a heavy heart and I must admit some anger. I have been on the Tribal Council only two years, so I have not had to deal with the "steelhead"

issue before this forum in the past. I can only review the cold record of past attempts by members of this committee and by other members of the Congress to abrogate our treaty right to take steelhead. Fortunately this body has always seen fit to reject these unjust attempts to steal our heritage. Many thousands of dollars and hours of anxiety have been spent on this issue, with the results always being the same—the moral sense of the Nation and this Congress refusing to be party to further abuse of solemn treaty right. I ask you, is it not time to stop this senseless and futile attack upon our rights? Is it not time that the responsible Indian and non-Indian leaders in Washington and Oregon be allowed to resolve this issue in a fair and just manner? As we have previous in 1983 and 1984, there are steelhead enough for all users and with wise use and management there always will be sufficient numbers available. The introduction of legislation such as S. 954 does nothing but allow the pot to continue boiling and give hope to the few who would abrogate our rights so that they can appropriate them to their own selfish use. I hope this committee will not allow itself to be so easily manipulated.

I would like very briefly to comment on the technical part of the bill. First, I endorse the statements of the other speakers on this issue and wish to thank the Northwest Steelheaders for their statement opposing this bill. The coverage of their leadership is greatly appreciated by the Tribes. If nothing else comes out of this hearing, their record will reflect that the Indian and the Northwest Steelheaders, formerly the bitterest of enemies, now both see that cooperation is the way to save the resource.

Specifically this bill pretends only to "decommercialize" steelhead and leave all other rights intact. In fact, it is far more sinister. It will:

(1) Without right extend state management authority into Indian reservations and prevent sale of steelhead on reservations, even between tribal members;

(2) Confer the "right" to sell sport licenses so that tribes can get back some of their lost income. This provision is ludicrous, as virtually every Northwest tribe, including the Yakimas, already do this. This bill cannot give a right already held. This provision is a sham to prevent Congress from recognizing the need to fully compensate tribes for the abrogation of their treaties;

(3) Terminates the rights of Indian tribes to sell licenses on reservation without requiring state licenses. Section 5(b) sneaks in the requirement that licensees must also have a state license, a further abrogation of treaty rights which nothing to do with steelhead;

(4) Make it illegal for tribal members to even possess steelhead on reservation without state permission. This provision not only abrogates a treaty right, but destroys a portion of our religion and culture as well;

(5) Reverses ten years of court precedent granting tribal self-regulation.

(6) Reduces any claim by a tribe, by the "right" allegedly granted to sell sport licenses. The Yakima Treaty of 1855 received the "exclusive right" to these fisheries. Congress cannot now pretend to be granting it in 1985 in order to reduce the bill.

S. 954 is not a proper vehicle for this committee to use to deal with a resource problem. It is immoral, unjust and unwarranted. I urge you to bury this issue once and for all. I would now like to tender my remaining time to Mr. Lonnie Selem, Yakima Nation cultural specialist for a few brief remarks.

Mr. ELI. I will turn this over to Mr. Lonnie Selem.

STATEMENT OF LONNIE SELEM, CULTURAL RESOURCES COORDINATOR, YAKIMA INDIAN NATION

Mr. SELEM. Good morning, Mr. Chairman and members. My name is Lonnie Selem. I am the cultural specialist for the Yakima Indian Nation. My duties are to ensure that no actions are taken by any official body to endanger the continued existence of the culture and religion of the Yakima Indian Nation.

I speak in that regard today. Mr. Eli has expressed the feelings of our people about this bill and its effects. I wish to explain how our people use steelhead today in the same manner they were used before the coming of the white man.

The Creator placed all the fish in the waters to be used by his people for different purposes. The Indian people have always con-

sidered the steelhead to be a species of salmon and have always treated it as such. The steelhead and its oils are key ingredients in preparing numerous types of salmon used by the Indians for food and for barter.

Without steelhead, my people would not be able to prepare numerous salmon and other food dishes. Today the steelhead is used in preparation of these foods in exactly the same manner as has been since time immemorial. These foods are a staple of our diet and are also used for trade and barter within our own people and with other Indian peoples. In order to properly use all of the foods the Creator gave to the Indians, the people must be here to seek those foods when the time is ready.

Your bill will limit the ability of the people to seek these foods without State permission and make even possession of these foods a crime without that permission. My people cannot understand a law that would create such hardship upon their existence, while at the same time allow a non-Indian to catch this same fish and take it home for his subsistence.

The Yakimas have always acted responsibly in managing their fisheries. Chiefs, and now tribal councilmen, regulate wise use of the resource. Our people respect and follow those regulations now as they have done forever. Your bill destroys that portion of our culture as well. Do not be fooled that this bill will not change the Indian way of life. It will in many ways. I know that in your hearts you will see what is right and defeat this bill for the last time.

I thank you very much for this opportunity.

Mr. PINKHAM. Thank you. I have one additional comment. We had a meeting with Senator McClure. The Nez Perce Tribe has a reservation in Idaho. Some of the commission representatives also met with him.

We feel that he has a pretty good understanding of the steelhead issue. He complimented us for not fully exercising our 50 percent share of the harvest of steelhead. We could have taken 115,000 steelhead in 1984 on the Columbia River, but we only took 71,000. Now that number seems to be great but there are hundreds of thousands of steelhead in the Columbia, and they did show up in Idaho.

We did this because we want to do all we can to allow for the escapement of steelhead and to help the species and to allow for the return of fish to Idaho. We certainly do appreciate the efforts of our esteemed Senator from Idaho, Mr. McClure, to understand the facts and issues underlying this bill. He was in exact agreement with us in saying there are other ways of resolving these issues, rather than in a court or through confrontations. He says agreements of some kind, some negotiated or cooperative effort is of the essence. We certainly do share that feeling with our Senator.

Thank you.

Senator GORTON. Mr. Pinkham, I want to thank you and thank all the members of your panel for your eloquent statements. I don't have any questions now because we have so many witnesses still to go. We may well submit some to you in writing, and I'm sure you will provide answers for us.

Senator Abdnor, a member of the committee, is now here. We are delighted to have him with us. If he does have a statement or any questions we would be happy to hear from him.

Thank you very much. We were happy to have this panel here.

Mr. PINKHAM. Thank you.

Senator GORTON. I do understand now that Mr. Olson is here, and we would be happy to hear from him.

Doug, we're glad to have you here. I understood you had to fly all night.

Mr. OLSON. Yes, sir, I got in quite late, and then my reservations weren't confirmed.

Senator GORTON. I see. Well, your statement will be included in the record in full as if read, but we are now delighted to hear from you.

STATEMENT OF DOUGLAS OLSON, REPRESENTATIVE, STEEL-HEAD AND SALMON PROTECTION ACTION FOR WASHINGTON NOW

Mr. OLSON. Thank you, sir. Mr. Chairman and members of the committee, I would like to enter this statement and, in a matter of saving some time, I will just make comment on it and add a few things.

Senator GORTON. We will be delighted. Fine.

Mr. OLSON. As I say, I am Douglas Olson. I am speaker bureau chairman for S/SPAWN, who was one of those instrumental in getting Initiative 456 passed in the State of Washington.

We as a group in S/SPAWN feel that equal rights, which is guaranteed under the Constitution, is equal rights for everyone. This is supported by 916,855 registered voters in the State of Washington, and the vast majority of those have never caught a steelhead and never will. Those people are interested in equal rights for everyone. This was the basis that we ran the initiative on, and it is still our basis, and it is not anything to deter some other group from anything except special rights and privileges. The Constitution of the United States says that no special rights, privileges, or immunities can be granted to any citizen based on race, creed, sex, or cultural heritage.

We believe that the steelhead should be used for its highest value, and commercial fishing of steelhead is not its highest value. In a survey done by the National Marine Fisheries in the State of Washington, a value of \$20.97 per steelhead was attributed to a commercially caught fish, while a sports-caught fish was valued at \$128. You can get some impression from the bulletin here as to the difference between the value of a commercial-caught steelhead and that of a sports-caught steelhead. We feel that the United States should bring to focus the fact that the natural resources should be used to their highest value in the State.

In 1981, when a prior bill was brought in, the dollar value at that time given to the Indians for the value of the steelhead caught was right at \$1 million. The cost of management of that steelhead for the State of Washington is over \$2 million. It would be far better for the Government to pay the Indian for the steelhead, rather than have this excessive amount used here to manage the

steelhead while we're only getting half of its value. Beyond that, there is a cost to the Government which is not included. We do not know and cannot obtain the factors which are necessary to get that on the record. That would possibly be far easier for you folks to obtain than it is for us.

I would at this point like to make comment on a number of things that have been said. The moneys that are taxed by the Indians is normally between 2 and 4 percent. That is what the Indian pays to the tribe. It is not so that the moneys that are presently being made by the Indians per se are going to help the entire tribe. They do not. The vast majority goes to the individual who goes out and does the fishing.

Another thing is the cooperation in the State of Washington. Trout Unlimited was listed as being one of the sportsmen's groups which advocate a cooperative policy with the Indians, and it is true with the Northwest Salmon and Steelhead Council. However, the membership just voted in a survey in the State of Washington, and 62 percent of the membership of Trout Unlimited voted to support the bill presently before this committee.

The law, as it has been referred to a number of times and never read, concerning the treaties, it has been indicated that the treaties say that the Indian has a 50-50 right to the fish. We recognize that the Supreme Court interpreted the law this way. However, if you go back to 1897, the Seneca Indians in New York brought this same case before the Supreme Court, at which time it was ruled that off the reservation they were subject to the same rights and responsibilities as all citizens in that State. Five consecutive decisions until 1974 supported that view.¹

The hatchery versus native fish: It was stated earlier that, by passage of this bill, that it would not produce any more fish in the river. Contrary to that, anytime that you can keep the native fish and keep them in the river, you are going to have a better group of fish. The only way you can get bigger fish is by keeping the native fish, and the nets do not discriminate. As a matter of fact, if they discriminate at all it is to take the larger fish. The hatchery fish are subject to more disease; they are harder to raise; they cost us more; and by decommercializing steelhead, we will get a lot more of the native fish back into the river.

Many of the rivers that are presently being netted by the Indian, they are not putting one single steelhead in the river. The Quinault Indian Reservation on the Quinault River puts the majority of steelhead in that river, and I believe it's well over 1 million that they put in that river alone, and the other rivers are not receiving a plant of steelhead.

¹ The *Bolt* decision is a very recent decision by the Supreme Court and two things should be noted. First it is contradictory to its past rulings and precedents and second it is unconstitutional. The constitution very clearly prohibits special rights and privileges to its citizens based on race, creed, sex or culture. The constitution cannot grant special rights and privileges to any group and provide equal rights at the same time to all its citizens.

The following is a personal observation: There are two sets of laws which man is governed by, legal and moral. I recognize this committee can legally kill this bill, however there is a moral obligation you have to the citizens of one State who have abided by due process of law to petition Congress regarding a grievance which as a body they have voted on. When a State votes to petition Congress, regardless what any committee believes, it is their responsibility morality to fulfill their request. The initiative was to petition Congress, not a committee. This bill is a partial fulfillment of that request.

They talk about the steelhead increasing in numbers. Well, let me tell you, we've got a problem in Washington State. We started out before 1974 with a three-fish limit. Then it went to a two-fish limit. Then it went to a one-fish limit. Then it went to a fish with a dorsal fin of 2.25 inches. Last year it went to a dorsal fin—and this is the card—of 2 inches, and on some rivers we went to what we call the "no fish limit." In other words, it was a catch and release program. We are not receiving the number of fish back that we did get. We had much better fishing prior to the *Boldt* decision.

It might be interesting for you to know, in the back history, that in 1929 it was placed on the game fish rolls, and at that time it started to be built up and we had a very good fishery in the 1960's. It took approximately 4 years after the *Boldt* decision before the people of the State of Washington noticed that there were very few steelhead left in the river, so the decommercialization of steelhead is the only way that we are going to get the native run back.

Now hook and line fishery depends on density. By that I mean, if more are going to be caught, more people are going to be out fishing. If the fish are low, less people are going to fish and less fish will be caught. It is stated by the game departments and fisheries departments that you will not deplete the run through hook-and-line fisheries. Also, the steelhead fishery only makes up approximately 2 percent of the fish netted by the Indians. At that point I would like to say that it is necessary to keep that particular, individual run alive, and the native run is what specifically we need.

The number of fishermen in the State of Washington I would estimate to be between 6,000 and 8,000. That's a relatively sure figure. When the rest of the 916,855 voters voted for this bill and for equal rights in the State of Washington, there must have been a definite reason. We believe that reason was equal rights for everyone. That is what we have come here today to ask for.

Thank you, sir.

[Mr. Olson's prepared statement, on behalf of Steelhead and Salmon Protection Action for Washington Now, follows:]

PREPARED STATEMENT OF DOUGLAS OLSON, REPRESENTATIVE, STEELHEAD AND SALMON PROTECTION ACTION FOR WASHINGTON NOW

Mr. Chairman and members of the Committee: My name is Doug Olson and I appear here today as the official delegate from S/SPAWN (Steelhead Salmon Protection Action for Washington Now), to speak for the over-whelming majority of Washington voters who voted in the last election to ask you to pass appropriate legislation to decommercialize steelhead trout. Some of the many supporting groups and individuals who contributed to our state-wide victory will also supply testimony, though I assure you that many more will testify when you conduct hearings in the Northwest.

We ask for an end to an unjust inequitable and wasteful use of a valuable natural resource. Before coming here, we worked successfully within the Constitutional system, first gathering the support of a vast majority in our state and only then coming to petition you for redress. We ask an end to an injustice perpetuated in the name of the United States; the establishment of a group with special hereditary rights to kill with nets and sell this pre-eminent game fish. We ask to stop the loss of millions annually resulting from the wasteful use of these valuable natural resources which occur only because of federal court orders entered at the request of the U.S. Finally, we want to end the unnecessary expenditure of taxpayers money—in the millions—on a bureaucracy ostensibly to "manage" this system, with cost far exceeding the benefit to the alleged beneficiaries, the tribal fishermen.

The election results in Washington you know. The more important question, especially for others in this country is why this was such an overwhelmingly easy deci-

sion for Washington voters, many of whom have never fished for or caught a steelhead trout and many of whom never will?

This is a far-from-unprecedented request; to decommmercialize steelhead trout. Decommmercializing and saving species of fish, birds and other animals has historically been the response of every state in this nation, and even of most civilized nations when limited supplies of precious natural resources are confronted with increasing human populations and pressures. The response has often been to decommmercialize and save the species for uses of higher value than commercial sale—for sports and subsistence use as proposed here.

Other examples of this approach abound—and examples of where we have woefully observed the results of a failure to act to stop commercial exploitation. Of examples worthy of mention, I point out the irony in the fact that many of the same persons who opposed our initiative can at times be heard bemoaning the loss of the American bison and the fact that it was a failure to act until nearly too late to ban its commercial kill, that was the most significant controllable factor contributing to the species' decline. Many other examples could be given, of our experience in this country. Other nations too, have learned the same lessons, often too late.

With respect to rainbow trout, *salmo gairdneri*, the species of which the anadromous steelhead is a subclass, most if not all states have made the same choice as Washington, banning the commercial harvest and sale.

The reason is not just the threatened destruction of populations from commercial over-fishing—though fear of that is a legitimate factor, the reason is a rational determination that trout have a highest and best use as a source of recreation and food which value is lost or diminished in several ways by commercializing, some of the costs are easily understood, and graphically depicted in the chart "Indian Commercial Nets Cost Economy Millions".

Placing an economic value on sports catch is difficult, this chart reflects a "best effort"—by the U.S. government. Note even this value does not show the secondary effects in Washington of a once-thriving part of the tourist industry now nearly moribund. Nor does any chart depict the loss to all Washington's citizens through diminishment in an important part of the quality of life; the outdoor experience and fishing. This may be partly conveyed by the picture of a father with his child, rods in hand staring woefully at the river blocked with nets filled with fish asking woefully "where's the fish?" This chart can't convey that disappointment. What the chart *does* show, is good economic sense; it is a waste of these valuable resources and Washington's economy suffers as a result—in the amount of millions a year.

The second step of this analysis of the costs of *not* acting to restore steelhead to the decommmercial status it had before U.S. and federal court intervention is shown in this chart "Indian Commercial Steelhead Fisheries Cost the Taxpayers Millions".

Some of these figures are very elusive—because available only from U.S. agencies and tribes. We do know that for the year depicted (the year of the last testimony on the predecessor bill) the total received by Indian fishermen for commercial sale of steelhead was less than \$1 million.

The documented costs to manage, to assure this Indian net catch were over \$2 million. Some of these were legitimate; additional management costs imposed on the state to comply with the federal court system. I shall discuss those further in a moment. To understand in part where the rest of it (and much not here accounted for) goes, look at your testimony list of opponents. There is an entrenched well-paid federal and tribal bureaucracy, which gets more money than the fishermen from perpetuating this wasteful system.

There are legitimate management costs associated with any fishery, of course these are multiplied manifold when a commercial net fishery is superimposed by federal court decrees upon a sports fishery, especially with a 50 percent split required between the two fisheries while hopefully, also protecting the resource. A moment of depression is necessary to further explain this. The Indian fishery occurs on numerous rivers and streams in Washington on each of which the federal court has decreed a split of the catch. Thus management must first predict the total number, and later report and count the catch, and monitor to identify any variance in run size as predicted (hopefully before it is too late, and overfishing has occurred). The management system for a stream with a harvestable run of several hundred may be nearly as complex and expensive as that on a large run.

Potentially disastrous effects of a net fishery may quickly occur which is not true with traditional sports—hook-and-line. Nets blocking a stream for one extra day kill available fish later determined needed for spawning. Hook and line fisheries are to some extent self controlling because they are very density dependent. Fewer fish available means fewer caught (low success means fewer will fish, further protecting low fish runs). A sports fishery can select and release fish such as marked hatchery

fish, which is common. The nets, of course kill all they catch. If selective, nets select the large fish, more desirable for spawning. This occurs today on some streams where the hook-and-line is regulated to release the larger native fish; the Indian net fishery is killing the same number of fish, but more of the natives. The result on some systems such as the Quinault, with a heavy Indian net fishery, has been to largely wipe out the native run, replacing it with hatchery fish. Which brings me back to the last column on this graph, and the most questionable figure. The hatchery costs of Washington are largely known; the total costs of federal steelhead efforts are not (although this Committee should be more successful than we in getting those cost) it suffices here to point out what I already have; that the costs of managing to provide the "Indian share" exceeds the value to the Indians. The taxpayers would be better off if we just gave the money to the tribes. It is also likely however, that some steelhead hatchery efforts can not be justified on a cost-benefit analysis if the fish resulting are commercialized, while the same expenditures are justified if the catch occurs in the higher-value recreational fishery.

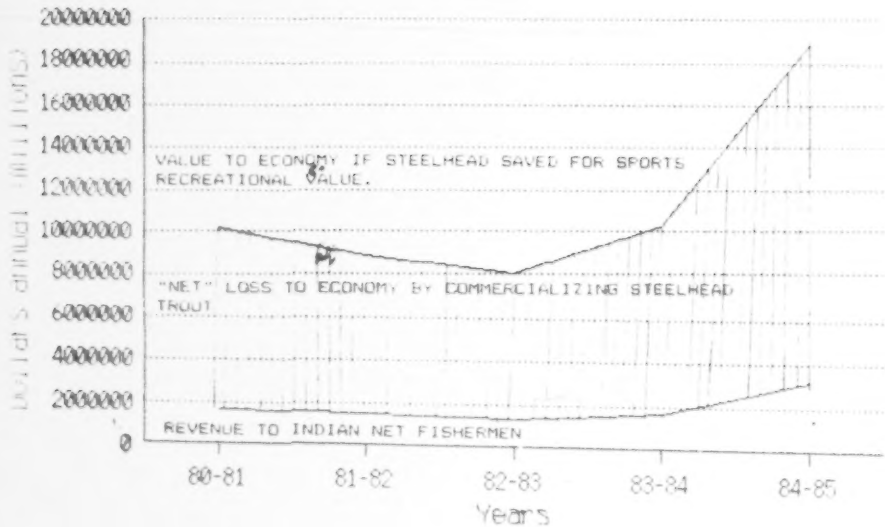
I hope I have helped convince you as Washington voters are convinced, the decommercialization of steelhead makes good sense.

We have also proposed through staff some changes to the form of this legislation, which changes we believe, will both broaden its appeal to directly include many more states and diminish any opposition caused by the unnecessary suggestion (added several years ago) of cost to the taxpayers through payment to the tribes. It is our understanding that the law is now settled in the context of Congress' action to make commercial sale of eagles unlawful that such a legislation does not require compensation to Indians previously dealing commercially. It is important to note also that Indians may continue to make truly traditional use of the resource for food. The success (and monies earned) through the sports-guide fisheries will increase, often important on our remote reservations.

By any objective rational analysis the benefit of what we ask is great. It is also the right result; an end to the temporary wasteful situation created only by a distorted interpretation of treaty language providing a "right to take fish in common with the citizens". We have a right to expect you to act, to cure this situation and restore the steelhead resource to its highest value, to be shared as a sports fish "in common", rather than killed for commercial gain of a few.

Thank you for conducting this hearing, and allowing us this opportunity to present the views of the citizens of Washington State.

INDIAN COMMERCIAL NETS COST THE ECONOMY MILLIONS



AVERAGE VALUE/FISH TAKEN FROM 1982 NATIONAL MARINE FISHERIES STUDY - NOT ADJUSTED FOR INFLATION

DRAMATIC INCREASE IN 1984 CAUSED BY FEDERAL COURT RULING COLUMBIA TRIBES NO LONGER NEED TO LIVE UP TO THEIR PRIOR AGREEMENT, NOT TO CONDUCT TARGET COMMERCIAL STEELHEAD FISHERIES (ON APPEAL)

INDIAN COMMERCIAL STEELHEAD FISHERIES
COST THE TAXPAYERS MILLIONS

Figures from prior testimony before U.S. Congress

Dollars					
2 million					
1 million			Management costs WA Game & known U.S. Government to tribes		Cost to Gov. ???
	Dollars To Net Fishermen				Apportioned total WA Game Hatcheries Costs **

**Does not include capital cost of facilities total hatchery dollars expended 59% caught by Indian nets (reduction to reflect sports catch).

COST TO U.S. GOVERNMENT of steelhead hatchery programs, including tribal, are not publicly available - should be available to this committee.

Senator GORTON. Just one question, Mr. Olson, relating to the last statement that you made. Do you want to amplify a little bit on the nature of the campaign—you were, I assume, a part of the initiative campaign, were you not?—how you went about coming up with this idea and what kind of campaign you put on to get those 900,000-plus votes?

Mr. OLSON. Yes, sir, we did it according to the Constitution of the United States. We have in the State of Washington a right for an initiative process. Under the initiative process, we registered it with the State. Then we went out with groups of people at the stores, the malls, different places. We worked extremely hard to get the names on the list and we did get over 200,000—well, we got 208,000 actual names on the list to put this on the ballot, in which 139,000 was all that was required.

From that point it went on to the voting process, which it was overwhelmingly supported in the State, and I might say it was an overwhelming support when you consider that every radio station but three, every daily newspaper, and every television station was against us, and still the people in the State of Washington voted for it. We spent approximately \$225,000 to bring this before Congress; they spent approximately \$315,000 to defeat us.

Senator GORTON. Thank you very much, Mr. Olson. We appreciate your coming here to testify on this and your testimony as well.

Do you have any questions? I'm sorry.

Senator ABDNOR. No, I do not.

Senator GORTON. Our final panel consists of Mr. Bledsoe, Mr. Conrad, and Mr. Ryan, and we would be happy to have them come forward. Mr. Bledsoe, you may proceed.

STATEMENT OF STEWART BLEDSOE, CHAIRMAN, NORTHWEST WATER RESOURCES COMMITTEE

Mr. BLEDSOE. Good morning, Mr. Chairman. My comments are in writing. Let me excerpt from them and be as brief as I can.

Senator GORTON. Your entire written statement will be included in the record as if read, and that is true for the other witnesses as well.

Mr. BLEDSOE. Thank you, sir.

I speak for the Northwest Water Resources Committee. I would like to give the Senator a little background on its organization and inception because I think it is a matter of interest. In speaking against the bill, I wish to speak to an alternative which is the cooperation that has come from the organization and the development of this group. It is a widely diverse assemblage, including timber, forest products firms; financial institutions; irrigators. These kinds of interests that traditionally—let's face it—have not spoken out strongly in favor of Indian interests on issues like this.

However, 11 years ago we took a look at the implications of the *Boldt* decision and about 4 years ago it became quite obvious that the group for whom I speak were going to be intimately involved, whether we wished to or not, in some of the fallout from the *Boldt* decision. We asked some experts what alternative strategies would be available to us, and they came back with three: First, litigation, in which we had been previously involved and rather fruitlessly in-

volved. The second was legislation. Their suggestion to us was that the legislation, difficult to accomplish, quite possibly would also not disassociate us, get us out of the involvement in this issue. They recommended a third, which was cooperation, and were very candid: "It's a long shot." It very probably could be a cropper, inasmuch as you are talking about an air of cooperation between people who have been—let's face it—strong opponents for a long period of time, with a lot of well-seated and carefully nurtured mistrust between parties on both sides of the issue. It seemed to be the only workable alternative so we embarked on that.

It was a slow process and a learning process, but we eventually developed the absolute core of the thing, which was a gradually accumulated air of trust and understanding between both parties. It was not easily achieved and still is not totally complete but certainly better than anything we have ever seen before. Out of this air of respect for each other's rights and cooperation, which has been cited today several times, I'll give you a few concrete examples that have taken place in the recent time.

First, there are company-sponsored and tribal-managed fish enhancement programs—not on paper, but for real, in real live river basins, working systems—as simple as utilizing a company helicopter to fly the young fish into areas that would be inaccessible, where they could then be let down and grow. In effect, we plant a salmon run in an area where it never had been depleted or even had never existed before—simple enough to do, but impossible to do without this air of cooperation between both parties, where they both approach the management of the natural resource. Whether it is the timber management or irrigation storage and, also, the maintenance of an anadromous fish run, it is a new era for us. It is not working perfectly, but we see some substantial beginnings.

Added to that—and I'm sure you are quite familiar with it, Senator—is the pattern which I regard as most encouraging, an era of agreement between government at the State level, and tribal managers, particularly in the south sound, where they now have a joint management agreement. Add to that the emergence, at least the beginnings of a pattern of settlement rather than litigation between tribal fish managers and hydroelectric generating outfits, where it looks like there could be some working solutions rather than court decisions. The thing we are all trying to avoid is continued litigation. It really doesn't matter who wins or loses when we walk out of the courtroom and we see the last fish go into somebody's net. That, I think, is the prospect that we all want to avoid.

As a result of these kinds of cooperation, I can sense by actually working with it that the pendulum has swung away from confrontation and litigation, and "fish-ins" and arrests and all the ugly stuff that we have been seeing in the past. There is the prospect of the actuality of all that being replaced by something different, which is actually doing something about the resource—not talk, actually doing it.

This gradual accumulation of trust and respect for the rights of both parties outweighs what I recognize as the well intention of the legislation being proposed, answering a constitutional question here placed by the citizens of Washington State through the initiative process. I see the legislation as a step backward. It resets the

stage that we walked away from 4 years ago, pitting people against each other as opponents rather than people sitting down around a table as cooperating and compromising problem solvers. As a result of this, I speak here against the proposed legislation because, in my judgment, it puts us back at square one.

As a result, with all respect, sir, we are strongly unconvinced that this piece of legislation is going to help, no matter how well intended it might be in its inception. We are urging, if possible, that you put aside the decommercialization of steelhead and support cooperation. We feel that cooperation is the very best approach. As a matter of fact, in the long run we feel it might be the only approach.

Thank you, sir.

[Mr. Bledsoe's prepared statement, on behalf of the Northwest Water Resources Committee, follows:]

PREPARED STATEMENT OF STEWART BLEDSOE, CHAIRMAN, NORTHWEST WATER RESOURCES COMMITTEE

Mr. Chairman and members of the committee, my name is Stewart Bledsoe. I would like to present the views of the Northwest Water Resources Committee, Seattle, Washington, and also the policy position of the Washington Forest Protection Association, Olympia, Washington, in opposition to statutory decommercialization of steelhead as proposed in S. 954.

The Northwest Water Resources Committee is an ad hoc coalition of forest products firms, irrigation districts, utility companies and other members of the private sector who have banded themselves together to see if there was not a better way to resolve disputes between tribal leaders and natural resources managers than the previous pattern of fruitless litigation. I serve as chairman of this committee and am here speaking on behalf of: Georgia-Pacific Corporation, Seafirst Bank, Burlington Northern, and its subsidiaries Meridian Land Company and Plum Creek Timber Company.

I am also speaking for: Weyerhaeuser Company; Puget Power & Light Company; Rainier Bank; Simpson Timber Company; Longview Fibre Company; and Chevron USA.

I am also speaking for the following Irrigation Districts: Sunnyside Valley; Roza; Naches-Selah; Kennewick; and East Columbia Basin.

They are all members of the Northwest Water Resources Committee.

I am also here as the Executive Director of the Washington Forest Protection Association, which represents private timber interests in the other Washington. Our members own and operate 5.2 million acres of commercial timberland in Washington State.

First, let me give you some background about the Northwest Water Resources Committee and why WFPA is a member.

It started about four years ago. It really started eleven years ago, or should I say they really started eleven years ago, the Fish Wars, Washington's notorious Fish Wars.

We in NWRC were late-comers on the scene, because we didn't want to get mixed up in this war. But there was no staying out of it. Timber, industry, and agriculture were involved in the Fish Wars whether we wanted to be or not. Ask our lawyers.

When it became clear to us that we couldn't avoid the problems, we asked our lawyers to come up with some alternatives about how to proceed. They told us we had three choices:

a. We could litigate, which was what we were doing; it was like throwing good money after bad.

b. We could try to get legislation passed, which is what some folks are doing here today; but our advisors recommended against it. They said this wouldn't solve the problem. It would only add fuel to the fire.

c. The third alternative was cooperation. It seemed like a long shot. Peace makers aren't necessarily met with open arms, particularly when they've been considered the enemy for a hundred years.

That's where the Northwest Water Resources Committee began. Our efforts, halting and laborious at first, finally established the irreplaceable atmosphere of trust between one-time militant opponents. This has produced a pattern of meaningful

and constructive discussions leading to workable compromises by the actual parties involved—a far cry from previous stilted arguments conducted by legal representatives in courtroom situations. These working agreements have led to:

a. Company sponsored and tribal managed fish enhancements which are reestablishing some once threatened anadromous fish runs which many doubters had at one time given up for lost.

b. A pattern of settlement between state agencies and tribal leaders for jointly managing the fisheries resources in South Puget Sound, an area which here-to-fore had produced ugly confrontations, fish-ins and arrests, bad feelings, expensive litigation, and a pitiful, dwindling handful of spawning fish.

c. Conversations which could unlock stalemated discussions between hydro-electric generating utilities and tribal fisheries interests who were struggling to maintain spawning returns.

There are others but these are a working sample.

I would like to clarify something for anyone who has to deal with these issues. The Fish Wars aren't about fish. They aren't about commercial fish versus game fish. They aren't about Indians and non-Indians.

If only it were that simple. I only wish it were that simple.

What we're really talking about here is nothing short of a war over natural resources, a war of factions, of competing interests, which tends to make it intractable.

I said "tends" because I think the pendulum has been swinging in a more constructive direction; and I know for a fact that cooperation can work. I've seen it work. I've seen people take on these seemingly intractable problems and solve them. Granted, it isn't easy. It takes time. But cooperation is working.

The key ingredient is mutual trust, mutual respect for the rights of all parties, tribal and resources managers alike, and most importantly, an arena that is uncluttered by the rigidities inherent in legislation and/or regulation. These inevitably take us back to square one and the old time role-playing and unproductive defending of the established turfdom.

That's why I'm here today. Because I want to see cooperation continue. The organizations I represent want to see cooperation continue. And the bill you have before you, Senate Bill 954, threatens to do more harm than it does good.

It threatens to divide people and pit them against each other—again—just when the battle scars are beginning to heal. It threatens to set the stage for another round of law suits. It threatens to put us right back where we started four years ago, in a situation where no one wins.

Certainly the last thing any of us wants to do is to walk out of one more courtroom battle and regardless of who "wins" the suit, watch the last fish go into someone's net.

We cannot afford to wait ten years or thirty years or however long it takes for the courts to decide these issues. We cannot afford to have the fabric and process of cooperation torn apart. It is delicate enough as it is.

We are strongly unconvinced that this piece of legislation is going to help, no matter how well-intended it might be in its inception.

What we are asking, what we are urging, is that you put aside the decommercialization of steelhead issue and support cooperation. Support the efforts of the people who work with the problems every day and are trying to solve them. We feel that cooperation is the best approach. In the long-run, it may be the only approach.

Thank you.

Senator GORTON. Thank you, Mr. Bledsoe.

Mr. Conrad.

STATEMENT OF DAVID R. CONRAD, PUBLIC LANDS AND WATER RESOURCES SPECIALIST, FRIENDS OF THE EARTH

Mr. CONRAD. Thank you, Mr. Chairman.

My name is David Conrad, and I serve as public lands and water resource specialist for Friends of the Earth here in Washington, DC. Our testimony presented today has been prepared with the assistance of our northwest office in Seattle, WA, which covers the States of Washington, Oregon, and Idaho, and I have a short summary of my statement.

Senator GORTON. Fine. Your whole statement will be included in the record and we will be happy to hear your summary.

Mr. CONRAD. Mr. Chairman, it is clear that S. 954 comes in response to the State of Washington's initiative 456, passed last fall. I appear today on behalf of Friends of the Earth to reiterate our organization's opposition to initiative 456 and the methods it employs to accomplish what I believe are common goals held by nearly all the interests concerned about this legislation—protection, restoration, and enhancement of our Nation's precious steelhead resources.

By targeting Indian treaties and tribal fishing rights for alteration and abrogation, S. 954 would stand in the way of true progress being made through cooperative efforts by tribes, State, and Federal fish and wildlife and land management agencies, sportsmen's groups, commercial fishing groups, environmental organizations, religious organizations, and timber, and other development interests who together are working on the complex problems of protecting and enhancing steelhead fishery resources. We see the emphasis on protecting fisheries and fishery habitats that has received new impetus from the *Boldt* fisheries decisions as having ushered in a new era, not without some difficulty and adjustment, that is focusing many people's attention on the critical life cycle aspects of these fisheries. As a result, there is much better understanding of the need for creative management, and the maintenance, and enhancement of habitats to help provide fish for sport, commercial, and tribal needs.

Mr. Chairman, we also believe that initiative 456 was presented in a way that was confusing to a number of voters and therefore does not necessarily accurately reflect true voter attitudes toward this complicated issue. In any event, the initiative does not represent good public policy, in our opinion.

Finally, we are here to say that we believe the various Indian Nations can be and are a strong force for environmental protection. Enacting S. 954 would not be the best means of achieving the fishery restoration sought. Instead, efforts should be directed to further cooperation of all groups concerned with steelhead fishery conservation and enhancement. Threats to steelhead and salmon, such as the overwhelming number of new, small hydrodiversion and dam projects, desperately need congressional attention. Ongoing attention is needed in forestry management to protect these fisheries. Innovative efforts are needed to improve fish passage where there are existing dams and where other blockages exist.

We applaud efforts such as last year's congressionally directed fish passage efforts on the Yakima River; the fish and wildlife planning efforts of the Pacific Northwest Power Planning Council; and the recently approved United States-Canada Fishing Treaty. These are the kinds of productive activities that need to be done for these commonly held fishery resources. Working together, we can respect the desires of many for the steelhead sports fishery and the tribal resource fishery.

Thank you, Mr. Chairman.

[Mr. Conrad's prepared statement, on behalf of Friends of the Earth, follows:]

PREPARED STATEMENT OF DAVID R. CONRAD, PUBLIC LANDS AND WATER RESOURCES
SPECIALIST FOR FRIENDS OF THE EARTH

My name is David Conrad. I serve as Public Lands and Water Resources Coordinator for Friends of the Earth. Friends of the Earth is a national environmental organization dedicated to the preservation restoration and rational use of the earth and its resources. Our testimony presented today has been prepared with the assistance of our Northwest office in Seattle, WA, which covers the states of Washington, Oregon and Idaho.

Mr. Chairman, we believe that the citizens of the state of Washington passed Initiative Measure No. 456 last year for two reasons. The first is that there is a deep concern for the future of anadromous fish in the Pacific Northwest region. This is clearly evident by the work of the N.W. Power Planning Council to mitigate and enhance the fishery resources of the Columbia River Basin. It is evident in the work various groups and tribes in the Northwest have done on the U.S./Canada Fishing Treaty, which we commend the Senate for ratifying. It took cooperation among tribes, agencies, environmentalists and fishing organizations, which had long been at odds, to achieve these results. This is clearly proof of the commitment to save anadromous salmon and steelhead. It is also clear that salmon and steelhead are critical issues in the region.

This concern, in some instances, however, has been channeled against Indian Treaties which were signed in good faith by the U.S. Government with the various Indian Nations of the Northwest. We view as particularly unfortunate, the Official Ballot Title of Initiative 456, that stated, "Shall Congress be petitioned to decommercialize steelhead, and state policies respecting Indian rights and management of natural resources be enacted?" By blowing a smokescreen that offered to respect Indian rights, much mischief was done.

Representative Sid Morrison in July of last year called Initiative 456 "misleading" and warned that it would not overturn the Boldt fishing rights court decision. We do not believe "respecting Indian rights" is, what would take place should S. 954 be enacted. Section 4(a) of the proposed legislation states, "Notwithstanding any Indian treaty or any decision by a court of the United States interpreting Indian tribal fishing rights . . ."

Friends of the Earth, in the Pacific Northwest, joined a large coalition of fishing, environmental, conservation, religious and tribal organizations in opposition to Initiative 456 because we saw that a different approach is needed to solve steelhead fishery conservation problems. Since Judge Boldt's decision, and its affirmation by the U.S. Supreme Court upholding Indian treaty fishing rights, it has been more clearly understood that Indian treaties were not a grant to Native Americans, but a grant from Native Americans to the United States: "In summary, the Indians negotiated the treaties as at least quasi-sovereign nations. They relinquished millions of acres of their lands, retiring to reservations carved out of those lands. But they expressly reserved their indispensable rights to fish at their traditional places" [Review of the Boldt Decision by the 9th Circuit Court of Appeals (1975)].

We believe a contract was made, if you will. Abrogation of Indian Treaties could be considered as analogous to breaking a contract. In view of the potential benefits that Indian Treaties bring to all Americans regarding additional assurances that the fishery resource will be protected from environmental impacts, such a contract has immense value.

We recognize that this hearing is in response to a state petition to Congress. But we remain opposed to the solution offered in Initiative 456. We are confident that continued cooperation among all the various fishery interests can go much further in restoring steelhead runs than a bitter fight over whether steelhead fish should be taken by sport fishing vs. commercial harvesting.

The Northwest Steelhead and Salmon Council of National Trout Unlimited in its 1984 position paper on Initiative 456 stated:

"Join the Boldt Revolt" says the headline on the initiative. Translated, it means overturn the Boldt decision. But what does going back to pre-Boldt mean for the various user groups affected by the decision? Does it mean a return to the days when non-Indian commercial fishermen harvested 70 to 80 percent of the salmon while the tribes averaged approximately 5 percent. Sports anglers 'enjoyed' the balance. Is this the 'proper utilization' of a publically funded resource as Initiative 456 asserts?

"Does going back to pre-Boldt mean the tribes will no longer release the nearly 33 million salmon fry and smolts they released in 1983?" [page 12].

At Friends of the Earth, we have sometimes pointed out that we do not save animals, we save habitat. This has been a major consideration in our approach to the

California Condor, the Bowhead Whale, the Peregrine Falcon and anadromous fisheries. As a nation we must focus on saving steelhead habitat and preventing environmental degradation. Threats from dam construction, including small-scale hydro-power projects, to say nothing of the impacts from existing federally-licensed projects, as well as the increased Forest Service road building program are all examples of key threats now facing the wild and rugged steelhead.

We are here to say that we believe the various Indian Nations can be a strong force for environmental protection. Enacting S. 954 would not be the best means of achieving the fishery restoration sought, but instead efforts should be made to further the cooperation of all groups concerned with steelhead fisheries conservation and enhancement. Working together we can respect both the desire for a steelhead sports fishery and a tribal resource fishery.

Senator GORTON. Thank you, Mr. Conrad. We appreciate your statement.

Mr. Ryan.

STATEMENT OF JOSEPH RYAN, DIRECTOR, NATIVE AMERICAN PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE, PACIFIC NORTHWEST

Mr. RYAN. Senator Gorton, my name is Joseph Ryan. I am the director of the Native American Program of the American Friends Service Committee in the Pacific Northwest. The American Friends Service Committee is the social justice arm of the religious Society of Friends, which is the Quakers. I think you know that we have had an active program in Indian affairs for the past 25 years.

We wrote the book, "Uncommon Controversy," in the 1960's, which was to study the background of Indian fishing rights, particularly the Nisqually, Muckleshoot, and Puyallup fisheries. That was published by the University of Washington press in 1970 and has gone through numerous additions. We are just now—since 1979—we are just now completing an update of that book which is at the University of Washington press and will be available in the fall, to analyze how the U.S. Supreme Court decision in fact has been implemented.

We are prepared to testify on this based on our own experience and our own research. I have a statement here which I assume will be put into the record—

Senator GORTON. It will.

Mr. RYAN [continuing]. I have a few brief remarks based on that. As other speakers have said, when the United States and the Pacific Northwest Indian tribes negotiated the peace treaties in the mid-19th century there were hard days of negotiations. The tribes eventually ceded to the United States millions of acres of land, and retained in the treaties some of their land and the right to fish.

The land which the United States acquired in the treaties has, as you know, provided enormous benefits to the United States and to the non-Indian citizens. The treaties, in fact, are the basis for the title to all of the land in the Pacific Northwest, and treaty abrogation legislation such as this, which would take away part of the bargain from the tribes, we believe upsets the moral basis for the title to the land in the Pacific Northwest. We believe that the tribes are allowing the non-Indians to live in peace on their part of the treaty, and the Congress ought to allow Indian tribes the peaceful enjoyment of the resources that they retained in the treaties.

As you know, the salmon and steelhead fishery is central to the political and economic and cultural survival of Indian people. The more we at the AFSC have studied this issue, the more we are aware of the importance of fishing to contemporary Indian life. We are delighted at the level of cooperation that has grown over the past 25 years, and particularly over the last 3 or 4 years. We are delighted that the steelhead runs are at all-time highs.

We feel at a time when cooperation and steelhead runs are at all-time highs, that it is particularly inappropriate to introduce legislation to abrogate, to take away, to break the promises in the treaties. We believe that it is immoral to break your word. We believe that it is not only immoral to break the treaties, but it is bad for the fisheries resource.

What we are asking you now is to hear all of this and to show some leadership for the people in our State, and to continue to help us down that road of cooperation. We need your help, Senator. Thank you very much for the opportunity to testify.

[Mr. Ryan's prepared statement, on behalf of the American Friends Service Committee, follows:]

PREPARED STATEMENT OF JOSEPH RYAN, DIRECTOR, NATIVE AMERICAN PROGRAM,
AMERICAN FRIENDS SERVICE COMMITTEE, SEATTLE, WA

The American Friends Service Committee is a social justice arm of the Religious Society of Friends. Its concern for the rights of Indian tribes derives from early Quaker principles of contract with tribes employed by the Quaker founders of the Colony of Pennsylvania. The American Friends Service Committee has maintained an active Indian Affairs Program in the Pacific Northwest for many years. Early in 1960 our office initiated an indepth study of the issue behind the fishing rights controversy and the contemporary attitudes and forces affecting the on-going conflict. The results of this study became the book "Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians," published by the University of Washington Press in 1970. The book, which went into its fourth printing in 1975, has served as a useful background resource for students of Indian studies and/or political science and has been widely disseminated.

In 1979 the AFSC decided to undertake research and writing of a new book that would evaluate the effects of *United States v. Washington*, analyze the enforcement of treaty fishing rights and the development of tribal management on the fishery in Washington State. This new book should be released by the University of Washington Press this fall. We have done extensive research into this issue and are prepared to testify based on our own research and analysis of the issues addressed in S. 954.

The American Friends Service Committee supports the long established principle of treaty law that "the treaty is not a grant of rights to the treating Indians, but a grant of rights from them, and a reservation of those rights not granted." In the treaties which made possible the non-Indian settlement of the Pacific Northwest, Indian tribes ceded to the United States millions of acres of land. It is these treaties that are the basis for the title to all of the land in the Northwest. During the treaty negotiation process, Pacific Northwest tribes bargained hard for a federal guarantee that their fishing rights would be protected and respected. At the close of the negotiations, the federal treaty negotiator, Isaac Stevens, told the tribes, "This paper secures your fish."

Tribes insisted that the treaties protect their fishing rights because fishing was central to their cultural, political and economic survival. In the 25 years that AFSC has been working to promote understanding of Indian treaty fishing rights, we have become increasingly aware of the important role that fishing plays in contemporary Indian life.

The treaty provisions that guarantee tribal rights to harvest steelhead for sale are central provisions to legally binding contracts. Non-Indians have received tremendous benefits from these contracts and should allow the tribes the peaceful enjoyment of the fishing rights retained in the treaties.

What S. 954 proposes to do is break the treaties with the tribes and to force tribes away from fishing commercially for steelhead. Naturally, tribes have and will not

consent to this unilateral proposal. Making a livelihood from the commercial fishery on steelhead was part of Pacific Northwest Indian life long before the treaties were signed. What S. 954 proposes to do is end a centuries-old economic mainstay. Steelhead provides a "bread and butter" fishery for many tribes during the winter months when no other salmon are available.

Tribal and state fisheries officials will testify on the status of the steelhead resource in Washington State. We understand that Columbia River steelhead returns have been at record levels and that the runs return to Washington state coastal and Puget Sound origin streams are also in good shape. This latter information we obtained from a joint news release of the Washington State Department of Game and the Northwest Indian Fisheries Commission. The steelhead resource is in better condition now than it has been in a long time. As our new book on fishing rights will show, tribal fisheries management has been enormously beneficial to Northwest anadromous fisheries resources.

In the years since we wrote our first book on fishing rights, we have seen continuous growth in the level of understanding of Indian fishing. We have seen close, cooperative relationships develop between state fisheries agencies and Indian fisheries managers. Indian tribes, sports fishing organizations, environmental groups, timber land owners and irrigation districts are working together. These new working relationships arise out of a desire to manage renewable resources in ways that protect the interests of all the parties and preserve the resources for unborn generations.

One wonderful product of the new era of cooperation is the U.S. Canada Pacific Salmon Treaty. This treaty, so crucial to the protection of chinook salmon, would not have been accomplished without the unity and cooperation of tribes, non-Indian commercial and sportfishing organizations, the corporate community, churches and environmental groups. In order to promote unity, at the beginning of the campaign for the U.S. Canada Pacific Salmon Treaty, all parties agreed that there would be no talk of abrogating Indian treaty fishing rights. Ending the attacks on tribal treaty rights made possible the success of this cooperative effort.

At a time when both user group cooperation and steelhead runs are at such high levels, we see S. 954 as particularly inappropriate. Proposals such as S. 954 undercut the cooperative efforts which have been so successful in our region.

AFSC has testified on proposals such as S. 954 on numerous occasions. We believe that it is morally wrong for the United States to break the promises it made in the treaties. We have come to understand that such proposals are not only immoral, they are bad for the fisheries resource. We strongly oppose S. 954 and suggest that this be the last time that steelhead treaty abrogation be proposed as legislation.

Senator GORTON. Thank you, Mr. Ryan. I have one question. I think Mr. Ryan from his perspective has dealt with it. The other two of you have not, and so I will direct it to Mr. Bledsoe and to Mr. Conrad.

Each of you dwelt exclusively, at least as I listened to your testimony, on which course of action was most likely to result in more of the resource, more steelhead. Neither of you dealt even indirectly with one of Mr. Olson's principal points, which was simply that since everyone who is a part of this controversy is a citizen of the United States and the State of Washington, from strictly an appropriate point of view everyone is entitled to be treated equally with regard to access to this resource. While Mr. Ryan has certainly spoken to that subject, neither of you have, and I would appreciate at least a brief statement as to how you deal with that point made by Mr. Olson.

Mr. BLEDSOE. My initial reaction to the baseline decision, the *Boldt* decision, was Mr. Olson's reaction: How could this be, the reshaping of something that from the non-Indian perspective I had always accepted as sort of a basic truth? We have reviewed this thing internally within our forest products industry, and have come to accept the fact that that decision and the maintenance of the treaty that drives it is in fact the law of the land. Personal reservations aside, we are a lawful society as long as we choose to obey those laws, whether they happen to fit our own personal posi-

tion or not. As a result, we have come to the conclusion that we will accept the decision of the court, the review by the Supreme Court, and the maintenance of the treaty.

That was the thing that drove us to a rather unconventional posture of deliberately seeking out people with whom we had been long-time legal adversaries and trying to involve ourselves personally, one-on-one, in conversations, saying, "All right. It is the law of the land. Now how are we both going to live with it?" It was a process of maturation, Senator, that we had to go through. It was not a simple task, but we are somewhat wiser now and that is the reason we can maintain a very heterogeneous combination of players in the Northwest Water Resources Committee, that goes across the board—timber, agribusiness, finance, hydroelectric generators, even people who navigate and move oil up and down the rivers. This group accepts the spirit and letter of the treaty and is willing to work within its parameters.

Senator GORTON. Mr. Conrad?

Mr. CONRAD. Senator Gorton, we believe that when those treaties were signed in the 1800's, that a contract was made between the Indian Nations and the Government of the United States, the people of the United States. We agree that that is the law of the land. We believe the Supreme Court has made that clear, and we see advantages for the resources and all the people of the United States from that decision, which I basically referred to in my statement. Therefore, we think that the people of the United States are going to benefit from current law, the way it is and the way it has been interpreted by the Supreme Court, and we do not believe that there is any cogent reason at this time to make changes.

Senator GORTON. Does that belief, Mr. Conrad, extend to the proposition that because of those treaty rights, Federal laws cannot affect land use policies or discharges into the river policies, environmental policies on Indian reservations?

Mr. CONRAD. Well, I am not terribly familiar with the exact manner in which some of those laws have been established or have been utilized, but my sense is that in general the environmental laws have been effective in preserving resources in the vicinity of reservations——

Senator GORTON. Well, there are ——

Mr. CONRAD. I know there are some issues out there right now about the Endangered Species Act and things like that but, generally speaking, we are not at this point of the opinion that there are major problems in that area.

Senator GORTON. OK. I thank you, and I thank you all very much, for—Mr. Ryan, sure, you can make another comment if you would like.

Mr. RYAN. Senator Gorton, one last brief point that I was asked to bring up here in terms of Mr. Olson's reporting on the views of Trout Unlimited. I was privileged to work with Trout Unlimited during the "No on 456" campaign, and got to know a number of the chapter presidents. They recently voted. They voted, 59 of the chapter presidents against this bill, and 6 were in favor. I am looking at a letter they sent to you to that effect.

Senator GORTON. Yes.

Mr. RYAN. Further, 62 percent of the members of Trout Unlimited did not vote in a poll supporting this legislation.

Senator GORTON. But they were all entitled to, were they not? Those were just nonrespondents.

Mr. RYAN. Therefore, I suggest that in terms of the views of Trout Unlimited, that you consult directly with them.

Thank you very much.

Senator GORTON. OK. Thank you all very, very much. We appreciate your being here.

The meeting is adjourned.

[Whereupon, at 11:50 a.m., the committee recessed, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR INCLUSION IN THE RECORD



BRIEFING PAPER

THE STATUS OF
1984-1985 COLUMBIA BASIN STEELHEAD RUNS
AND
A RESPONSE TO
COLUMBIA RIVER INTERTRIBAL FISH COMMISSION ALLEGATIONS
AGAINST THE IDAHO DEPARTMENT OF FISH AND GAME

April 22, 1985

"ANADROMOUS FISH: Statistical Facts" is included in this document regarding the 1984-85 steelhead runs. It was prepared this past February in response to Columbia River Intertribal Fish Commission statements concerning the 1984-85 steelhead run. The information is still pertinent and the projections are close to expectations. A final accounting will be made later this spring when all hatchery runs have returned and final Idaho harvest figures are in.

The only new development is a recent charge by Columbia River Intertribal Fish Commission against the Idaho Department of Fish and Game of mismanagement and cover-up concerning a disease problem with hatchery smolts released into the Salmon River. These charges are refuted in the following information.

Jerry M. Conley
Director
Idaho Department of Fish & Game

The Columbia River Intertribal Fish Commission (CRITFC), has attributed the lack of steelhead in the 1984-85 Salmon River run to an outbreak of IHN disease in smolts from the Niagara Springs Hatchery that were subsequently released from Pahsimeroi Hatchery on the Salmon River in 1983. Essentially zero return of those fish to the Salmon River is alleged.

The CRITFC claim that the Idaho Department of Fish and Game (IDFG) is attempting to "cover up" the disease outbreak at Niagara Springs Hatchery is hard to understand when, to establish this claim, it is quoting published reports prepared by IDFG and sent by IDFG to CRITFC and to more than 100 other fishery-related entities over the past five months.

The CRITFC is also in error when stating IDFG did not disinfect its facilities after the IHN episode. This was done. IDFG follows all standard, applicable disease control methods.

The IDFG thoroughly investigated the possibility that poor survival from the 1983 smolt release at Pahsimeroi Hatchery might be responsible for low 1984-85 returns into the Salmon River when the low return first became apparent in October of 1984.

For the following reasons, the conclusions from this investigation did not at that time and do not at this time change the IDFG position that the 1984 Columbia River gillnet fishery had a drastic adverse impact on the 1984-85 steelhead fishery in the Salmon River.

1. IHN is a disease that primarily impacts small fish fry and, in Idaho hatcheries, normally runs its course by October. This occurred at Niagara Springs Hatchery in 1982. Surviving Niagara Springs Hatchery smolts released from Pahsimeroi Hatchery in April of 1983 were not clinically diseased and were recorded as in good to excellent health.
2. Smolts from Niagara Springs Hatchery also suffered a serious outbreak of IHN in 1982, but these smolts, after release, produced the bulk of the record 1983-84 run into the Salmon River; fish that were obviously not doomed.
3. Only 29% of the total Salmon River A-run hatchery smolts in 1983 were exposed to high levels of IHN prior to release.
4. The CRITFC quotes from a brand-mark study that indicates only 1.3 percent of the 1983 release of smolts from Pahsimeroi Hatchery reached Lower Granite Dam on their downstream migration. From this study it concludes that the 1983 Pahsimeroi Hatchery release had essentially zero survival.

This is fallacious because:

- a) The report clearly questions the accuracy of using freeze brand marks on juvenile steelhead from warmwater hatcheries such as Niagara Springs based on poor mark retention. Poor mark retention will cause a drastic underestimate of survival;
 - b) The studies are not designed to provide absolute numbers of smolts surviving but only comparative year-to-year migration rates;
 - c) An identical study in 1984 indicated even lower survival of Salmon River smolts to Lower Granite Dam than in 1983. There were no apparent disease problems or any other problems with these smolts. Again, poor mark retention is the suspected problem with the study results.
5. A-run steelhead, those bound for the Salmon River, are generally composed of primarily one-ocean fish (fish that spend one year in the ocean before returning), but the Pahsimeroi Hatchery run has averaged 51% two-ocean fish over the past six years (a 50/50 ratio is the IDFG goal). Using this ratio, an estimated 24,000 two-ocean hatchery fish from the 1982 smolt release were expected into the Salmon River during the 1984-85 run. Based on the best estimate to date, only 6,000 actually reached the Salmon River in 1984-85.
 6. Even if the invalid assumption is made that the 1983 release suffered total mortality, there should still have been a significant run into the Salmon River of 1982-released two-ocean fish.

The total hatchery A-run over Bonneville Dam in 1984 was composed of 60% two-ocean fish. Any claim cannot be supported that, for some reason or other, essentially none of the 1982 A-run smolt release from Pahsimeroi Hatchery returned as two-ocean fish while all the other 1982 A-run hatchery smolts from the upper Columbia River Basin returned as primarily two-ocean fish.

7. Each year the Salmon River steelhead run is composed of four separate components: wild, one-ocean fish; wild, two-ocean fish; hatchery-produced, one-ocean fish; and hatchery-produced, two-ocean fish. If failure of returning Pahsimeroi Hatchery one-ocean fish due to IHN is the cause of the poor 1984-85 Salmon River run, as maintained by CRITFC, then why did the other components of the 1984-85 run also return at a reduced rate when these other components were obviously not affected by IHN.

Despite the record run at Bonneville Dam, the middle Columbia River steelhead run, like the Salmon River run, was also depressed. There were no disease problems with these A-run fish.

The Columbia River net fishery is clearly implicated as the cause of both declines.

8. Finally, to date almost 3,000 of the 1983 smolts that CRITFC claims died of IHN have returned as adults to the Salmon River in 1984-85. More of these fish should return in 1985-86.

In summary, IDFG is not aware of any valid arguments that show the poor 1984-85 steelhead run into the Salmon River was not caused by the Columbia River Indian gillnet fishery. The IDFG feels that reasonable management measures in the Columbia River could have prevented this situation and provided adequate steelhead to both the Indian fishery and the Salmon River. Such measures were urged by IDFG, but unfortunately, those measures were not implemented.

The IDFG is more than willing to join in a cooperative effort to resolve the Columbia River steelhead fishery problems to the benefit of all parties involved. It is very difficult, however, to resolve problems in the fishery if one party refuses to acknowledge problems exist.

Challenge for the Future

We challenge CRITFC to accept the responsibility for rational management of the impacts of the treaty fishery; participate in efforts to develop known-stock, hatchery-supported fisheries for the tribal fisherman; and investigate fishing methods such as trap-nets or fish wheels which allow live release of wild fish when necessary.

It is a generally accepted fact that heavy fishing in mixed-stock fisheries leads to annihilation of all but the strongest stocks. Mixed-stock fisheries must be limited by the spawning escapement needs of the weaker or more sensitive stocks. This point has been made repeatedly by the tribes with relation to ocean fisheries. It applies equally to the Columbia River gillnet fishery and the impacts on upriver sport or tribal fisheries and spawning escapements.

In spite of the dire predictions and outlook of 10 years ago, the Idaho Department of Fish and Game has proven that steelhead populations can be managed and enhanced, even above eight dams and up to 900 miles from the ocean. The same results can be accomplished with salmon if cooperation and responsible fishery management can be achieved. Use of the rebuilt anadromous fish resource by one segment of the users, however, should not be at the expense of other segments of users.



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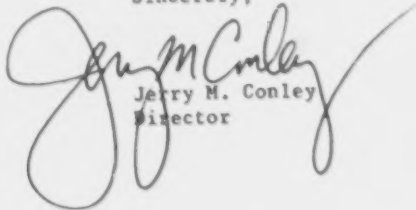
August 2, 1985

The Hon. Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Senator Andrews:

Enclosed is additional written testimony concerning S.954.

Sincerely,



Jerry M. Conley
Director

Enclosures

ANADROMOUS FISH MANAGEMENT



Department Sets Record Straight

The Idaho Department of Fish and Game and its anadromous fish management programs have recently come under an unusual attack by the Columbia River Intertribal Fish Commission (CRITFC) and the Nez Perce Tribal Executive Council (NPTEC). This attack appears to be designed to discredit the Department and draw public attention away from the impacts of the treaty tribes' commercial gillnet fishery on the anadromous fish resources of the Columbia River.¹

The Department has, to this point, refrained from engaging in a public debate of the issues, preferring to attempt to resolve our differences in established negotiation procedures. Recent news releases, particularly the June-October issue of "CRITFC News," are misleading to the point that we must set the record straight.

Idaho Steelhead Management -- Success Story

A major issue is the management program for steelhead developed in Idaho. The success of the program cannot be debated. In the 1974-75 run, only 11,600 steelhead passed over Ice Harbor Dam. In contrast to this low point, during the fall of 1984 alone, over 91,000 steelhead have returned to the Snake River above Lower Granite Dam.

The Idaho contribution to the total Columbia River steelhead run has increased significantly and is now well over 50 percent. The majority of steelhead in 1984's all-time record Bonneville Dam count originated in Idaho. This dramatic increase in steelhead runs is made up of three components: (1) the hatchery-produced segment, (2) the wild segment, and (3) the natural segment.

Hatchery Programs

Most noticeable is the hatchery-produced group. Steelhead hatcheries in Idaho have been developed as compensation for lost fish and fish habitat due to hydropower dam development. The major steelhead hatchery programs are:

- (1) Idaho Power Company's Niagara Springs Hatchery with trap and release sites at Hells Canyon Dam and the Pahsimeroi River. This program compensates for fish lost to the Hells Canyon/Oxbow/Brownlee dam complex on the Snake River;

¹ The Nez Perce tribe is a member of CRITFC with treaty fishing rights for anadromous fish and fishes commercially. The Shoshone-Bannock tribes in Idaho are not members of CRITFC and their treaty rights or actions are not at issue.

(2) Dworshak Hatchery, developed by the U.S. Army Corps of Engineers to compensate for fish lost when the North Fork Clearwater River was blocked by Dworshak Dam; and

(3) the Lower Snake River Compensation Plan (of which only Hagerman National Fish Hatchery is completed), as compensation for fish lost to the four Corps of Engineers dams on the lower Snake River.

Hatchery steelhead are a relatively new phenomenon in Idaho. Facility development began in the late 1960's after Dworshak and Hells Canyon dams were built. The first large hatchery returns which supported major fisheries occurred in the late 1970's. Hatchery programs have expanded from a few hundred thousand smolts annually in the late 1960's to around 4.5 million per year since 1980. Production will exceed ten million by 1990.

Wild Steelhead Restoration

The second important component of Idaho steelhead runs is wild steelhead. Prior to 1972, virtually all steelhead in Idaho were of wild, natural origin. In the ten years between 1962 and 1971, wild steelhead returns to Idaho averaged 69,000 fish per year. This number dipped to fewer than 10,000 in the 1974-1976 era of most severe dam impacts.

The wild steelhead run has exhibited a positive rebuilding trend in the past seven years and approached 30,000 fish over Lower Granite Dam in 1983. The major production areas for wild steelhead in Idaho are the wilderness streams including the Selway, the Middle Fork Salmon and the South Fork Salmon River drainages, and other Salmon River tributaries. Wild steelhead production depends on the indigenous populations without artificial supplementation.

Restoring Natural Spawning Runs

The third major component of Idaho steelhead runs is natural fish. These are fish of hatchery ancestry which are rearing and spawning in natural habitat. Natural fish have been used in Idaho waters for over 20 years to supplement many wild populations and to reestablish natural spawning runs. This program has expanded rapidly since hatchery programs have become successful.

Since 1980, 2.5 million smolts, 15 million fry and fingerlings and 12 million eyed eggs have been planted in areas where natural spawning runs were needed. An additional 18,000 adult fish have been released from hatchery programs to spawn naturally.

All three components of the steelhead run have benefited from improved smolt bypass and transportation systems at the hydropower dams, improved management of the river flows and spills, and from the past three years of above-normal precipitation which have contributed unusually high river flows and improved survival of smolts on their downstream migration.

A major part of the CRITFC attack on IDFG anadromous fish management programs is that IDFG should plant more hatchery fish out into natural habitat where the fish can return to spawn naturally instead of releasing all smolts at hatcheries.

In the past five years more juvenile steelhead, incubating eggs and excess adults have been released into natural spawning and rearing areas in Idaho than have been released at hatchery weirs.

The Idaho Anadromous Fish Management Plan (AFMP) identifies that major new outplanting programs will be established as additional hatchery capacity is constructed. The majority of juvenile anadromous fish reared to full-term smolts are presently released at the hatchery weir to ensure an egg supply for continuing the hatchery run and for outplants.

Were it not for the continual threat of lower river fishery impacts or poor migration conditions, more smolts could be outplanted. For example, Pahsimero River steelhead smolt releases average 900,000 per year. In 1983 this group of fish was not significantly impacted by the Zone 6 gillnet fishery and 14,000 returned to the hatchery, allowing for large numbers of fry and adults to be released in natural areas. In 1984, this group apparently was hardest hit by the lower river fishery and migration conditions, and current projections indicate the escapement needed to continue existing programs may just barely be reached.

Outplanting cannot be increased as long as minimum hatchery egg needs are jeopardized by excessive nonselective Indian fishing in the lower river.

Records also show that, during the late 1960's and 1970's, when Rapid River Hatchery was returning excess chinook salmon, more eggs and fry were provided to other reintroduction programs than were reared at Rapid River for smolts.

At the present time, important programs such as Clearwater River chinook reintroduction are being delayed by shortages of eggs at Rapid River due to dams, downriver fisheries, and in some years, Indian harvest at Rapid River itself.

Tribal Participation in Management

The Department has been criticized for its negative approach to dealing with the Indian tribes and failing to allow Indian participation in decision-making regarding anadromous fish. As the AFMP was being developed, the Nez Perce tribal biologists were kept informed.

The first people to see the earliest working papers on the plan, outside of IDFG staff, were the members of the Nez Perce Tribal Council and tribal fisheries program personnel. The draft plan was not released to the public or other states and agencies until after it had been discussed with the tribal representatives.

IDFG has repeatedly requested the tribe's participation in preparation of the plan to restore anadromous fishery resources in Idaho. Although the plan has been in the hands of NPTEC and CRITFC for nearly a year and the intermediate drafts have been supplied for review, the Department has received no response to its pleas for participation, and meetings for further discussion of the plan have been cancelled by the tribal council.

On August 29, 1983, IDFG submitted a draft Memorandum of Understanding (MOU) to NPTEC in an attempt to formalize communications and responsibilities on fish and wildlife management and law enforcement. After 6 1/2 months, the tribal council replied with a revised draft on March 16, 1984. IDFG submitted a compromise draft to NPTEC attorneys on April 20, 1984--and is still awaiting a reply after nine months.

In spite of the refusal by NPTEC and CRITFC to comment on AFMP drafts and the delays in approving a memorandum of understanding, the IDFG Commission has adopted the AFMP which includes the following statements:

- "In recognition of their treaty rights, the tribes will be extended opportunity for input into all management decisions which apply to tribal fisheries."
- "Treaty rights to share in the harvest of both naturally and hatchery-produced fish will be recognized."
- "There will be full exchange of data between tribal and Department biological staff on a timely basis."
- "A Memorandum of Understanding will be developed with each tribe which will set out the procedures for cooperative management of the fish runs."
- "The Idaho escapement goals proposed in this plan include tribal harvest."

Sharing Responsibility

The Nez Perce tribe has fished for salmon in Idaho every year except 1984 when it closed the fishery in Idaho but continued to fish the Columbia. In a continuing effort to rebuild the runs, non-Indian fishermen have not had a chinook fishery in Idaho since 1978.

The Nez Perce tribe has never been restricted in its take of steelhead in Idaho. Non-Indian fishermen have suffered from past closed consumptive seasons to help rebuild the runs and even now are still subject to restrictive regulations to protect wild fish.

The tribe has basically enjoyed the benefits of increased runs brought about by the Department while essentially all the deprivation has been borne by the non-Indian fishermen in the state.

The AFMP contains tables of estimated anadromous fish production and escapement needs. Downriver fisheries are included in the estimates of total production. More than half of the fish produced in Idaho are expected to be harvested in fisheries or lost to other sources of mortality outside of Idaho. Idaho escapement goals include fish for treaty Indian fisheries within Idaho.

Indian Participation on Commission

The Director of the Idaho Department of Fish and Game has been accused of preventing expansion of the IDFG Commission to include an Indian representative. NPTEC is fully aware that the present makeup of the five-man Commission was established by initiative and referendum in 1939.

Members of the Commission are appointed by the Governor with the approval of the State Legislature. The Commission appoints a Director of the Department of Fish and Game, who serves at the pleasure of the Commission and who carries out Commission orders and policies. To propose that the Director determines the actions of the Governor, Legislature or Commission is not very realistic.

Protection of Fish and Wildlife Resources

We welcome the participation of the Nez Perce Tribe in management decisions which impact the tribal fisheries. We appreciate the tribe's recent involvement in efforts to protect salmon and steelhead habitat including the wilderness issue, Forest Service road building and timber management, small hydropower development and water quality regulations.

We do, however, deeply resent the statement that the Department doesn't "fight for the resource." The Department and a few conservation groups have stood alone too often and for too many years in their efforts to maintain and restore fish and wildlife resources in Idaho.

The Idaho Department of Fish and Game would more than welcome the opportunity to formally compare the Department's record of "fighting for the resource" with that of the Nez Perce tribe.

Challenge for the Future

We challenge the Nez Perce Tribe to join the Department in continuing efforts to return anadromous fish to their former abundance in the Snake, Salmon and Clearwater rivers. We ask that the tribe support Idaho escapement goals for both hatchery and wild salmon and steelhead in dealings with the downriver entities so that rebuilding of Idaho populations can be accelerated. We ask that the tribe conduct its fisheries within Idaho consistent with the needs for spawning escapements and reintroduction programs.

We challenge CRITFC to accept the responsibility for rational management of the impacts of the treaty fishery, participate in efforts to develop known-stock, hatchery-supported fisheries for the tribal fisherman; investigate fishing methods such as trap-nets or fish wheels which allow live release of wild fish when necessary.

It is a generally accepted fact that heavy fishing in mixed-stock fisheries leads to annihilation of all but the strongest stocks. Mixed-stock fisheries must be limited by the spawning escapement needs of the weaker or more-sensitive stocks. This point has been made repeatedly by the tribes with relation to ocean fisheries. It applies equally to the Columbia River gillnet fishery and the impacts on upriver sport or tribal fisheries and spawning escapements.

In spite of the dire predictions and outlook of 10 years ago, the Idaho Department of Fish and Game has proven that steelhead populations can be managed and enhanced, even above eight dams and 500 miles from the ocean. The same results can be accomplished with salmon if cooperation and responsible fishery management can be achieved. Use of the rebuilt anadromous fish resource by one segment of the users, however, should not be at the expense of other segments of users.

ANADROMOUS FISH: Statistical Facts

VOLUME 7 NUMBER 4 OF THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION NEWS (JULY-OCTOBER, 1984) USES SOME PARTIAL OR INACCURATE STATISTICS TO ADDRESS THE IMPACTS OF THE 1984 TREATY INDIAN COMMERCIAL FISHERY ON IDAHO-BOUND STEELHEAD. THE CRITFC CLAIMS, AND THE IDFG COMMENTS FOLLOW:

"More steelhead made their way to Idaho this year than have ever been counted in any previous year." (CRITFC)

The 1984 steelhead count at Lower Granite Dam of an estimated 91,000 fish is the highest on record since Lower Granite was completed in 1975. That year, however, was the second-lowest count into the Snake River (16,000) in history. Steelhead runs have been steadily rebuilding since then. One hundred eight thousand steelhead crossed Ice Harbor Dam, the first to provide counts of steelhead into the Snake River, in fish-year 1962-63 before dam impacts became severe. The nine-year average (1975-1983), which CRITFC uses as a comparison with the 1984 run, includes six of the eight lowest Snake River steelhead counts in history.

"Of these Idaho-bound steelhead, a precedent-setting 19,200 were 'wild' or, more accurately, natural spawners." (CRITFC)

There is nothing "precedent-setting" about only 19,200 wild spawners passing Lower Granite Dam in 1984 except that it reverses a five-year rebuilding trend. For the 10-year period 1962-1971, before lower Snake River dams and before hatchery runs, the wild runs to Idaho averaged 69,000 steelhead. We have suffered no significant habitat losses since 1970. Since 1980 we have observed increasing numbers of wild and natural spawners in Idaho. Our 1982 estimate was 22,000-25,000 and the 1983 estimate was approximately 30,000 wild steelhead into the Clearwater and Salmon rivers and the Oregon/Washington tributaries of the Snake River.

The 1983 wild steelhead run estimate used by CRITFC to show improvement in 1984 is greatly underestimated. This estimate is based on limited sampling of steelhead taken by gillnets in September of 1983. Using similar data on the 1984 run would result in a reduction of at least 20,000 steelhead from the number estimated by the more complete sampling done at Bonneville Dam in 1984.

"The news is also good for steelhead in the mid-Columbia..." (CRITFC)

The data also does not support the claim for increased wild fish escapement at Priest Rapids in 1984. In fact, there was no sampling done at this dam to assess the number of wild steelhead. The total run (25,300) is actually 6,400 fish fewer than the 1983 count of 31,682. As with the Salmon River A-run steelhead, in spite of a near record count at Bonneville Dam, the upriver escapement above Priest Rapids Dam is substantially lower than 1983, a fact that is reflected by poorer fishing.

"A preliminary harvest estimate for non-Indian sport fisheries is also about 70,000." (CRITFC)

The estimate for 1984 non-Indian sport harvest of 70,000 fish is based on the 1983 calendar year harvest figures published by the states. Calendar year figures include sport catches for portions of two consecutive fish run years. The 1983 calendar year includes a spring fishery on steelhead which entered Idaho in the fall of 1982 and a fall fishery on steelhead which entered Idaho in the fall of 1983. Idaho produced a 32,000-fish catch in calendar year 1983 based on an excellent spring fishery on carryover from the 1982 run and an outstanding fall fishery in the Salmon River. The 1984 spring fishery was very poor. The Salmon River catch in the 1984 fall fishery is predicted to be only 4,500 fish compared to 15,000 in 1983. Idaho sport catch for calendar year 1984 will be closer to 19,000 steelhead than 32,000, even with the above-average return to the Clearwater hatchery programs.

Estimates of catch on a calendar year basis can mask what is actually happening to an individual fish run. True comparisons can be made only on a fish-year basis. A valid comparison for the fall, 1983 and 1984, fishery is as follows:

	Total run	Percent change	Indian harvest ¹	Percent change	Idaho harvest	Percent change
1983	217,634		15,000		22,100	
1984	315,146	plus 45	71,000 ²	plus 373	12,000 ³	minus 44

¹ Includes only fish that were sold through commercial outlets. Does not include "take home" subsistence fish, unrecorded sales, or mortalities from gillnet dropout.

² This is the largest recorded number of steelhead taken by the tribes in the years 1938-1984.

³ Preliminary estimate.

In summary, the total steelhead run increased and there were record runs over Bonneville Dam. The tribal harvest increased to a record level but the Idaho harvest decreased drastically. Based on available data to date it appears that, while the B run into the Clearwater may be of record size, the A run fish into the Salmon River were severely impacted by the downriver fishery. Approximately two-thirds of the Idaho fishery is normally supplied by the Salmon River, and this situation represents a significant net loss to the Idaho fishery.

February 25, 1985

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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE
(208) 334-2400JIM JOHNS
ATTORNEY GENERAL

June 17, 1985

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

I very much appreciate your thoughtful invitation to submit testimony on S 954, which would decommercialize steelhead trout by designating the species as a game fish. Although it will not be possible for me to appear and present testimony to your committee, I do support this legislation and would appreciate it if you would include this letter as a part of the hearing record.

The steelhead trout in the Columbia-Snake River system are a truly remarkable and magnificent fish. They begin their life in the upstream gravel bars of the Columbia and Snake, migrate to the Pacific Ocean for a one or two year stay, and then battle their way up river to those same gravel bars to spawn and regenerate the species. Since 1938 the already difficult voyages of these fish have been complicated by the construction of eight dams on the Columbia and Snake Rivers. The steelhead runs were seriously impacted by the dams, particularly in the late 60's and throughout the 70's. Due to massive efforts undertaken by the state and federal governments, as well as private utility companies, the steelhead runs have been partially regenerated in recent years only to face another serious problem--a sizable commercial fishery conducted by members of the Columbia River Inter-Tribal Fish Commission.

For example, last year 314,000 steelhead came over Bonneville Dam, headed for upstream spawning destinations. More than half of those fish were returning to Idaho destinations to regenerate their species. It promised to be a banner year for Idaho sportsmen--a fitting reward for substantial investments and sacrifices made by Idaho citizens to enhance steelhead runs.

Unfortunately, many of those fish, particularly those destined for the Salmon River, were intercepted by gill nets set in the Columbia River by downstream Indian fishermen. 71,000 fish were harvested by the Indian fishermen for commercial sale. Many others were injured by the gill nets and later died. Estimates as to the number of fish which fell victim to the Indian commercial fishery range as high as 120,000.

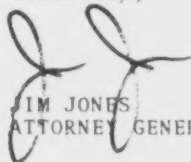
Steelhead are considered a game fish in Oregon, Washington and Idaho and, therefore, no commercial fishery is permitted by those states. On February 25, 1977, members of the downstream Indian tribes entered into a five-year management plan for anadromous fish with the States of Washington and Oregon whereby they agreed to refrain from conducting a commercial fishery on steelhead. The agreement provided in pertinent part that, "The Indian tribes recognize the importance of steelhead stocks to recreational uses and agree to forego a target commercial fishery." With the expiration of that five-year agreement and the increased vigor of the steelhead runs, pressure for a commercial Indian fishery mounted. The pressure culminated in the virtually unchecked commercial fishery conducted by the Inter-Tribal Fish Commission last year.

It is obvious that the maintenance of this type of commercial fishery by the Commission is unfair to sportsmen in Oregon and Washington and to upstream fishermen in Idaho, both Indian and non-Indian. It is also counter to good management and conservation practices. The downstream Indian tribes are the only ones who have been able to conduct a commercial fishery for steelhead in recent years. It is clear that the commercial fishery will have to be severely restricted or eliminated in order to enhance the runs of steelhead and insure equitable treatment for Idaho fishermen. It should be pointed out that the Shoshone-Bannock Tribes at the Fort Hall Reservation in Idaho have also been deprived of the opportunity to share in the bounty of the rejuvenated steelhead runs as a result of the excessive commercial fishing downstream. The Shoshone-Bannock tribes have been responsible conservationists and have not expected to conduct a commercial fishery on steelhead, but have experienced the same inequitable treatment as other upstream fishermen as a result of the commercial fishery.

It is for these reasons that I support S 954. This legislation would designate steelhead as a game fish, thus eliminating the commercial fishery conducted by the Indians and prohibiting a commercial fishery by other fishermen in the three affected states. It does not make sense for the federal government, the State of Idaho, Idaho Power Company, and others, to invest millions of dollars in the effort to increase steelhead runs only to have those fish intercepted and canned by downstream Indians for sale at a price that amounts to a fraction of the investment required to produce the fish. When Idaho citizens and

other upstream fishermen are deprived of the benefit of their investment, what incentive do they have to continue investing in the future of the steelhead? Idahoans can't be expected to continue subsidizing the Indian tribes' commercial fishery. Legislation to make steelhead a game fish, which could not be subjected to commercial fishing pressure, would benefit all sportsmen, whether upstream, downstream, Indian or non-Indian. If the federal government must pay compensation to adjust for treaty fishing rights, it makes much better economic sense to pay in dollars instead of fish.

Sincerely,

A handwritten signature in dark ink, appearing to be 'J. Jones', written over a typed name and title.

JIM JONES
ATTORNEY GENERAL

JTJ/tg

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STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

OLYMPIA

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BOOTH GARDNER
GOVERNOR

July 8, 1985

The Honorable Mark Andrews
Chairman
Senate Select Committee on
Indian Affairs
Washington, D.C. 20510

Dear Chairman Andrews:

As the Governor of Washington, I appreciate the opportunity to present testimony regarding S. 954. The enclosed statement constitutes my formal position on the decommercialization of steelhead trout and I respectfully request its inclusion in the hearing record of S. 954.

Thank you again for the opportunity to present these views to the Select Committee.

Sincerely,

Booth Gardner
Governor

Enclosure

STATEMENT OF BOOTH GARDNER, GOVERNOR
STATE OF WASHINGTON
TO THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
JULY 11, 1985
WASHINGTON, D.C.

Mr. Chairman and Members of the Select Committee.

Thank you for providing me the opportunity to present my views on this issue.

In the history of the state of Washington, few natural resource issues have engendered as much emotion and controversy as the commercial harvesting of steelhead trout by treaty Indian tribes. This unique resource provides important recreation and economic opportunities to the people of our state. For over a decade, however, the wise management, enhancement and use of our steelhead resources have been impaired by the impacts, perceived impacts and controversies generated by the decisions in the United States v. Washington and subsequent federal court cases. People in Washington, and the steelhead resource have paid a very high price for these controversies. This price goes well beyond the substantial public funds that were expended on the many court challenges lost by the state. The real, and no longer acceptable, price is the high cost we have paid for too long in terms of the acrimony and bitterness that divide people in Washington and threaten the very future of the resource. Neither we, nor the steelhead trout can afford to permit anger, frustration, misinformation or a desire to return to the past to dictate our natural resources management policies. The time has come to begin putting the divisiveness behind us and work together to effectively manage and enhance our fisheries resources.

After more than a decade of costly litigation, the rights of treaty fishermen to harvest steelhead for ceremonial, subsistence and commercial purposes have been repeatedly upheld in court. Now, some who oppose such

harvesting are pursuing the decommercialization of steelhead trout through federal legislation. The Congressional process is complex and can be at least as time consuming as the operations of the federal court system. The past court battles brought bitterness, controversy and false hope into steelhead management. Now the legislative pursuit of decommercialization offers more years of controversy with no legitimate expectation of any changes in the legal realities of the situation. While we as patient, thoughtful and reasoned people may have another ten years available to make our decisions on this issue, the steelhead does not. That resource needs our positive attention now.

As resource stewards, our responsibility is to adopt and pursue policies that are in the best long-term interest of the steelhead trout, so that we can aid its survival and proliferation and increase the returns to both the sports and treaty fisheries. Decommmercialization is simply a mechanism to allocate shares of a potentially diminishing resource by taking opportunities from one group and giving them to another. It is not a sound management tool or strategy that is capable of addressing the needs of the resource.

Decommmercialization is a negative approach to a critical natural resource need. The continued pursuit of decommercialization is time consuming to the point of threatening the resource, encourages acrimony and bitterness, preempts people's established rights and does not address the basic element of the steelhead issue, the long-term needs of the resource itself.

As the Governor of Washington, I believe decommercialization is an imprudent and impractical goal. I do not support further efforts to decommercialize steelhead trout.

Along a number of Washington river systems, the state, treaty tribes and sport fishing interests are beginning to work together on steelhead management and enhancement projects. As the 1984-85 winter steelhead season indicates, these projects are succeeding and can make important contributions to the overall steelhead fishery. We should take the opportunity to build on this cooperative climate and mold these existing projects together with

expanded cooperative research, fish rearing and stocking, data gathering, information sharing, and habitat improvement efforts into a comprehensive steelhead management and enhancement program.

We share a great stake in the future of the steelhead and the time has come to end this fruitless debate. Rather than continuing to encourage the negative elements inherent in decommercialization, I invite the federal government join with the state of Washington, treaty tribes and private sport fishing interests to help us effectively manage, enhance and utilize our steelhead resources.

I thank the Members of the Select Committee for their thoughtful consideration of my comments.

JACK S. WAYLAND
Director



STATE OF WASHINGTON
DEPARTMENT OF GAME

600 North Capitol Way, G-11 • Olympia, Washington 98504-0091 • (206) 753-5700

June 6, 1985

The Honorable Mark Andrews
Chairman
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Chairman Andrews:

Thank you for inviting the Washington State Game Commission to offer testimony on Senate Bill 954 which is designed to provide additional protection for steelhead trout. I would like to point out that the following comments are those of the Game Commission and do not reflect in anyway the views or opinion of Governor Booth Gardner.

In 1981, the Washington State Game Commission adopted a set of policies designed to guide the State Department of Game in the preservation, protection, and perpetuation of all wildlife species, as well as providing maximum wildlife-oriented recreation. These policies reflect the needs of wildlife and the citizens of our state.

One of the Game Commission's policies specifically directs the Department of Game to pursue decommercialization of steelhead. Another indicates a general opposition to commercial exploitation of wildlife. The Washington State Game Commission believes it is important and productive to work cooperatively with Indian tribes which have treaty rights guaranteed in our state. This past winter's steelhead fishery was a remarkable example of this cooperation in that not one single steelhead controversy reached the courts or the Fisheries Advisory Board. We believe continued negotiations by all parties will benefit the interests of all citizens, as well as steelhead trout.

Still, a very basic philosophical difference remains; while salmon are ideally suited for both commercial and sports activities, steelhead is a prized sporting fish whose value economically and esthetically is far greater to the state when pursued by sports fishermen. Each fish caught generates up to \$400 to the state's economy, depending on various factors, but the real value of steelhead lies not in economics. The steelhead represents American quality of life values. Its wild and untamed strength and beauty coupled with its extreme vulnerability to commercial netting and environmental or habitat degradation make it stand out as a species that deserves special consideration.

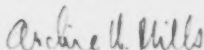
The Honorable Mark Andrews
June 6, 1985
Page two

There are many, in fact hundreds of, species of fish and wildlife which are not suited to any form of commercialism. All of these represent traditional or ethical public values and should be used with respect and biological wisdom.

We support any efforts to decommercialize steelhead trout and fully recognize that this is not a simple issue. The endless problems of management of steelhead and salmon on the Columbia River clearly illustrates the complexity and expense of attempting to maintain or rebuild wild steelhead stocks which are subjected to a mainstem commercial fishery. We believe all options which protect the rights and privileges of all citizens as well as the wisest possible use of our natural resources should be considered.

Thank you again for the opportunity to submit written comments to your committee.

Sincerely,



Archie U. Mills, Chairman
Washington Game Commission

AUM:dpn

cc: Game Commission Members:

Elizabeth Meadowcroft, Vice Chairman
Frank L. Cassidy, Jr.
Vern Ziegler
Norman Richardson
Jack Dierdorff

GARY F. BASS

ATTORNEY AT LAW
SUITE 1900 PACIFIC BUILDING
THIRD AVENUE & COLUMBIA STREET
SEATTLE, WASHINGTON 98104
(206) 622-0989

June 13, 1985

Senator Mark Andrews
Chairman, Indian Affairs Committee
United States Senate
Washington, D.C. 20511

Re: S.954

Dear Senator Andrews:

I am an attorney and a member of the Colville Indian Tribe. The State of Washington and Indian Tribes have been working cooperatively toward solution of the fishing controversy. Great strides are being made towards solving that between those parties. Abrogating any treaties unilaterally would destroy all the cooperation that has gone on before. More importantly, the promises that were given to the Indian people at the time the government was negotiating for the land would be broken. That would be one of the saddest commentaries on the principles of the American Government that I can imagine. Breaking the promises given to the native people who relied on the Great White Father's word that they would be able to continue their means of existence. I fervently hope that the United States Government does not stoop to such an action.

Very truly yours,

Gary F. Bass

GFB:gn



The Klamath Tribe

P.O. Box 436
Chiloquin, Oregon 97624
Telephone (503) 783 2219

June 18, 1985

Senator Mark Andrews
United States Senate
Senate Office Building
Washington, D.C. 20510

IA

The Honorable Senator Andrews:

S. 954 a bill to abrogate Indian treaty to harvest steelhead for sale, will be the subject of a hearing to be held June 19th in Washington, D.C. before the Senate Committee on Indian Affairs.

The Klamath Tribe is strongly opposed to the enactment of S.954. We oppose the legislation because it is dishonorable, unnecessary and ultimately bad for the fisheries reserve and for Indian fisheries.

Unilateral proposals to take away steelhead rights are dishonorable because they set aside the U.S. word of honor given in the treaties. The U.S. cannot afford morally to become a nation that breaks its treaties at will. We will all benefit as a people if we stand by these promises.

Treaties between Indian tribes and the United States are legally binding contracts which guarantee the property rights of both parties. In the treaties, the tribes ceded millions of acres of land to United States in exchange for a guarantee that Indian fishing rights would be protected and respected. In the treaty negotiations, the tribes bargained hard for, and obtained, guarantees of protection for their fishing rights. Proposals to upset this bargain and take away tribal property rights are in effect proposals which would undermine the basis for the title to all of the land in Washington State. Non-Indian citizens have benefited enormously from the treaties. Indians should be allowed the peaceful enjoyment of the rights they retained in the treaties.

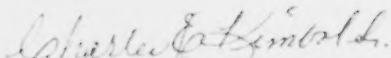
Fishing for steelhead is central to the cultural and economic survival of Indian tribes. The crucial role which fishing plays within Indian communities is one reason why Indian tribes have strong commitments to effective fisheries management and conservation.

Over the last decade Indian Tribes have been working to increase understanding and cooperation to a successful level. Proposals such as S.954 undercut this cooperation S.954 should be rejected. Steelhead



treaty abrogation should never again be put into this form of proposed legislation.

Sincerely,


Charles E. Kimbol, Sr.
Tribal Chairman
Klamath Tribe

CEK/rt



The Klamath Tribe

P.O. Box 436
Chiloquin, Oregon 97624
Telephone (503) 783-2219

June 18, 1985

Senator Mark Andrews
United States Senate
Washington, D.C. 20510

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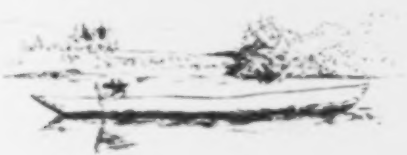
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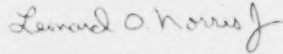
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Sincerely,



Leonard O. Norris, Jr.
Chairman
Klamath Indian Game Commission

LON/rt

!

NATIONAL CONGRESS OF AMERICAN INDIANS

Est. 1884

July 10, 1985

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Cheyenne & Creek

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The Honorable Mark Andrews
Chairman

Select Committee on Indian Affairs
United States Senate
Washington, D. C. 20510

RE: Statement for the Hearing Record on
the S. 954, Hearing of July 11, 1985

Dear Mr. Chairman:

The National Congress of American Indians has appeared before this and many other Congressional Committees over the last forty-one years to advise the United States Government of the views Indian Nations hold regarding proposed legislative initiatives. We have often endorsed Congressional proposals to enact legislation aimed at improving relations between the United States and Indian Nations, fulfilling commitments established by treaties between our Nations and the United States and perfecting the implementation of U. S. trust responsibilities owed to Indian Nations. We have opposed legislative proposals that undermine U. S./Indian governmental relations, violate provisions of treaties or deny Indian peoples the right to live and utilize their resources in peace and security.

S. 954 is an ill-conceived proposal that would abrogate treaty commitments of the United States and would promote conflict and confrontation between Indian people and their neighbors. The National Congress of American Indians strongly opposes this legislation and urges that the Committee reject it with all deliberate speed.

Members of the U. S. Congress often have suggested that lower case action is taken on legislation, every effort should be made to address an issue without Congressional intervention.

The Honorable Mark Andrews
 Chairman
 Select Committee on Indian Affairs
 July 10, 1985
 Page Two

Unfortunately, such attitudes have not always prevailed in the past. Indian people are still suffering from the imposition of such disastrous policies as allotment, assimilation, relocation and termination. Too often have we fallen victim to short-sighted politically-motivated policies that have been initiated unilaterally by the United States to "solve" perceived problems. Too often have those policies made matters worse. Too often have "solutions" exacerbated conflict between rights of Indian peoples and the desires of their neighbors.

The myopic perspective of Members engaged in backyard politics frequently cause the Congress to engage in reactionary politics, rather than deliberative policy making. We suggest that interests of the nation would be far better served if the Congress were to direct its attention toward encouraging the adoption of preventative strategies capable of contending with controversy through non-confrontational means.

One extremely promising approach that has been employed to address problem areas involves the development of strong working relationships between Indian, county, state and national governments. For the last decade, many Indian Nations have been working quietly and systematically with county, state and federal officials to define non-confrontational methods for resolving differences.

In 1977, the National Congress of American Indians, National Tribal Chairman's Association and the National Association of State Legislatures formed the National Commission on State-Tribal Relations. Participation by these organizations, plus the National Association of Counties and National Association of Attorneys General, have made the National Commission on State-Tribal Relations an important focal point for defining new methods for problem-resolution between Indian governments and their neighbors.

By the late 1960s in the State of Washington, Indian Governments began working with the Governor and legislators to define common grounds for mutual cooperation on a broad range of issues. Recently, Indian Governments and the State have achieved major progress in the resolution of many conflicts

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
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over complex issues related to fisheries management and regulation. The State Department of Fisheries and many Indian governments have engaged in many sessions where politically troublesome and technically difficult have been squarely examined and thoroughly discussed. And, solutions have been found. While Indian Government officials and State Fisheries officials have not always agreed, representatives of both governments have been increasingly willing to continue talking about the problems and potential alternatives until mutually acceptable solutions emerge.

The dialogue between Indian Governments and the State of Washington now extends to a wide range of matters of mutual concern. Transportation, nuclear waste, economic cooperation, land claims and foster child care are among the many issues in which greater trust and cooperation typify tribal-state relations. At the local level, Indian governments and county governments have begun to work more closely with each other on such issues as legal jurisdiction, economic development and social and health issues.

Increased understanding and cooperation has also resulted from the formation of the Northwest Water Resources Committee and the Northwest Renewable Resources Center. These organizations have brought industry together with representatives of tribal and state governments to work together to develop innovative solutions to complex problems.

Improved communication resulting from the collective examination of issues from different perspectives promotes mutual respect and harnesses energies that have been unproductively spent in the past. A prime example of the accomplishments that can be achieved by redirecting resources that have historically been expended in conflict toward more constructive purposes is the Salmon Interception Treaty that was recently ratified by the Senate. After nearly twenty years of frustration, the Treaty was made possible by the growing working relationship between Indian Governments, the State of Washington, Indian and non-Indian fishermen and business, labor, environmental and community organizations.

The Honorable Mark Andrews
 Chairman
 Select Committee on Indian Affairs
 July 10, 1985
 Page Four

In Washington, Oregon and Idaho, more and more people are coming to share the common recognition that political and legal conflicts are wasteful, costly and counterproductive. Conflicts over the salmon and steelhead fisheries between states, tribes and nations have adversely affected the resource base. Intergovernmental discussion, talks and negotiations have produced, in a very short time, greater progress toward support and enhancement of the fisheries than have all the resources expended in controversy over the last several decades.

This emerging cooperation between tribal and other governments is by no means a phenomenon limited to the Pacific Northwest. In the Midwest, another region of the United States where fisheries is an important economic and political concern, Indian Governments and their neighbors are rapidly moving toward greater communications and closer cooperation.

The Lac du Flambeau in Wisconsin have joined with neighboring non-Indian governments and communities to form the Lakeland Task Force. This task force has just completed a report concerned with cooperation between governments on the stocking of streams, public information initiatives and tribal-state business development initiatives.

In June, the Wisconsin Counties Association and Indian Government officials met to work on a cooperative plan to improve public understanding of Indian governments and county government and the northern Wisconsin area generally. This joint effort is intended to improve the area's chances of attracting tourism. Earlier meetings of the county association and Indian Governments have dealt with such issues as joint law enforcement and problems associated with acid rain.

In Minnesota, the Fond du Lac Indian Tribe and the City of Duluth recently signed a joint agreement to engage in joint economic ventures and cooperative economic planning.

The Burnett County Development Association and Saint Croix Tribe have been working toward the cooperative development of natural resources for mutual economic and environmental benefit.

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
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Many other Indian-state-county governmental initiatives have been launched in the Great Lakes Region, demonstrating greater interest in inter-governmental trust-building, rather than tendencies toward political and legal conflict.

The movement toward increased cooperative problem solving in the Pacific Northwest and the Great Lakes Region is becoming increasingly evident throughout the United States. In the Southwest, the Navajo Nation and the State of New Mexico have reached agreement on issues as complex as jurisdiction, and political boundaries. In the Northeast, the State of Maine and Indian tribes have also begun to explore areas of mutual benefit.

In less than fifteen years, major improvements have begun to take place in relations between Indian Nations and their neighbors. These changes, for the greater part, have come about through improved communication and increased understanding between governments, resulting from decisions to examine problems from the perspective of long-term relationships between neighbors.

This approach contrasts markedly with more traditional means of addressing a specific issue in a forum where disputants are already in immediate conflict. By looking at issues from the standpoint of living and working together in the future, participants have been able to act with greater flexibility and innovation. Even though agreement has not always been possible, it is clear that for the first time in history, wholly new ways of resolving differences are being found.

Yet, despite the growing trend toward increased cooperation between Indian tribes and their neighbors, there remain certain elements of society whose self-interests are served, not from conflict reduction or resolution, but from the escalation of controversy. In its role in establishing policy direction for the United States, the Congress must have the capacity to recognize the ulterior motives of interests bent upon promotion of conflict and exercise the foresight to quickly stop destructive measures that find their way into legislative forms

The Honorable Mark Andrews
 Chairman
 Select Committee on Indian Affairs
 July 10, 1985
 Page Six

like S. 954. Instead of addressing legislation of this sort that can only rend Indian and non-Indian relations, the Congress should join in the increasingly productive dialogue in progress by becoming a direct participant or enthusiastic supporter.

A great deal can be learned from the progress being made toward improved intergovernmental relations between Indian nations and states, counties and cities. The trend toward building working intergovernmental structures suggests new and important possibilities for resolving historic conflicts that have frequently been dealt with through court proceedings. The kind of creativity, flexibility and willingness to resolve differences increasingly demonstrated by governments across the United States is proof that there are dynamic and productive methods yet to be explored which can reduce tensions among governments.

Administration attitudes, however, do not appear conducive to encouraging constructive dialogue. On no fewer than twelve occasions since 1944, the National Congress of American Indians has called upon the United States to engage in a constructive dialogue with Indian governments on the basis of mutual interests. The National Congress of American Indians has been a vigorous advocate of cooperative intergovernmental relations between Indian nations and their neighbors in the various states. But, despite our efforts, the Congress and the Administration remain reluctant to engage in constructive dialogue to reduce tensions and improve relations between neighboring political jurisdictions.

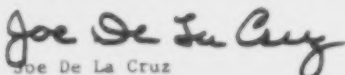
In 1983, President Reagan announced his Administration's commitment to the formal conduct of government-to-government relations between Indian Nations and the United States. Within days after the President's announced Indian policy, the National Congress of American Indians responded with a fourteen point statement regarding policy implementation. The Administration has yet to respond and engage in serious dialogue with Indian governmental officials to effectuate improved intergovernmental relations. We still look forward to the time when the United States will formalize the government-to-government process, making it a working, meaningful policy.

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
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Page Seven

The capacity for Indian and non-Indian intergovernmental cooperation to result in improved relations between Indians and non-Indians cannot be ignored. I urge the Committee to reject reactionism and the narrow special self-interests promoted by such legislation as S. 954. We urge you to reject conflict-generating measures that can only subvert or reverse the trend toward responsible, cooperative problem management. We urge you to help devise and support mechanisms that encourage consensus building through effective intergovernmental frameworks.

Perhaps the Congress would not be considering legislation like S. 954 today if the President's policy of government-to-government relations actually were in place. Perhaps, then, the Congress would not even hear initiatives that serve to divide and inflame, and could concentrate on leading and considered initiatives.

Respectfully,


Joe De La Cruz
President

JDLC:rs



Northwest Indian Fisheries Commission

1985 JUN 10 AM 9 59

June 5, 1985

Mr. Pete Taylor
Staff Director
U.S. Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Mr. Taylor:

Thank you for the invitation to provide testimony to the Select Committee regarding S.954 on June 19, 1985.

As you have been previously informed, I will head a Northwest Indian Fisheries Commission panel at this hearing.

It is my understanding that you will also be hearing from the Columbia River Intertribal Fish Commission, and Mr. Joe Ryan regarding other panels. I assume you have sent invitations to testify to them, as well.

Again, thank you for your interest.

Sincerely,

A handwritten signature in cursive script that reads "Bill Frank, Jr." The signature is written in dark ink and is positioned above the printed name.

BILL FRANK, JR.
Chairman

SLR:cm



FEDERATION of FLY FISHERS

June 12, 1985

U.S. Senator Mark Andrews, Chairman
United States Senate
Select Committee on Indian Affairs
Washington, DC 20510

Dear Senator Andrews:

I was flattered to receive your invitation to testify regarding S. 954. Regrettably, I will be unable to submit testimony in person, but would like to present to you the following comments, as written testimony to be read into the record.

It was my pleasure to participate in the negotiation of the U.S.-Canada Pacific Salmon Interception Treaty as a member of the U.S. delegation. As you know, these negotiations have recently been successfully completed. Particular pains were taken to include in the language of the treaty conservation and protection of steelhead trout. We were successful in reaching agreement on this and other points largely because of the expressed community of interest and strong working relationship established between treaty tribes and non-tribal delegates.

The conduct of preparations for the negotiations and the negotiations themselves brought to light the ability of tribal and non-tribal members of the delegation to work together successfully toward a common goal. The turmoil brought about by the adversarial relationship of tribes and non-tribal interest following the Boldt decision, turmoil that has required resolution on so many occasions in Federal Court, has not been a very constructive solution to the problems of successful fish conservation and allocation.

We have seen over the past year, and in particular since the signing of the U.S.-Canada Pacific Salmon Interception Treaty, indications that negotiated arrangements have worked to everyone's advantage in managing, conserving, and allocating fisheries resources. It is therefore my recommendation to the Committee that we continue to address these extremely important issues on a negotiated basis rather than attempt further resolution in the courts or through the legislative process, either of which can only reignite the fires of distrust and dissent that have exhibited themselves, particularly in Washington state, since the Boldt decision.

I appreciate the opportunity to make my views known to the Committee, and would be pleased to elaborate on them at your request.

Very truly yours,

Bruce M. Ferguson
Member

International Federation of Flyfishers

"CLEANER WATER - BRIGHTER STREAMS"



The First Presbyterian Church

1935 JUN 17 PM 1:54
2936 Rockefeller Avenue, Everett, Washington 98201 259-7139

Dr. Edwin C. Coon, Pastor

Janet Sonnenburg, Seminary Intern

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington D.C. 205011

Dear Senator Andrews:

Everett is a city located very near to the Tulalip tribal reservation, and visits with our Native American friends have increased the spirit of trust and cooperation between our local citizens and the Native Americans. There are a group of us who are now most concerned that such a positive spirit may be destroyed and such a trust broken, as Congress prepares to vote on Bill #S.954, the bill which if passed would abrogate Native Americans' rights to harvest steel-heads for sale.

Such legislation would, in our minds take away the tribal rights we agreed to preserve and support in the treaties drawn up between the Indian tribes and our government. It would be "going back on our word," disregarding the honorable intentions of our past negotiations, and making another mockery of our country's relationship with Native Americans. If we determine to abrogate such treaty rights, then it would be only fair for our Native American friends to abrogate all the agreements they made with our government regarding any title to land in Washington State and elsewhere.

We stand in opposition to Bill S 954 and wish to register our opposition.

Sincerely,

Edwin C. Coon

Edwin C. Coon
Chairperson,
Social Issues Committee
Presbytery of North Puget Sound

ECC:mm

June 10, 1985

Copy: Thelma Burgonio, Ministry with Native Americans,
Presbytery of North Puget Sound



June 14, 1985

Senator Mark Andrews, Chairman
Senate Committee on Indian Affairs
SH 724 Hart Senate Office Building
Washington, D. C. 20510

RE: Written Testimony on S. 954

Dear Senator Andrews:

Enclosed please find my written statement on S. 954 "Steelhead Trout Protection Act." I will not personally be able to make an appearance on June 19th to give this testimony but I would like it included in the official proceedings.

My sincerest appreciation to you for your cooperation on this matter.

Sincerely,

Ray DePerry
Executive Administrator

Enclosure

STATEMENT OF

RAYMOND DEPERRY, EXECUTIVE ADMINISTRATOR
GREAT LAKES INDIAN FISH AND WILDLIFE COMM.
P. O. BOX 9
ODANAH, WI 54861

715-682-6619

REGARDING

S. 954
"STEELHEAD TROUT PROTECTION ACT"

IN MY CAPACITY AS EXECUTIVE ADMINISTRATOR OF THE GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION, I REPRESENT THE INTERESTS OF ELEVEN CHIPPEWA TRIBES FROM MICHIGAN, WISCONSIN, AND MINNESOTA. OUR TRIBES ARE EXERCISING OFF-RESERVATION FISHING, HUNTING, AND GATHERING RIGHTS, WHICH HAVE BEEN AFFIRMED WHEN TESTED IN STATE AND FEDERAL COURTS. THE TRIBAL LEADERSHIP RECOGNIZES THAT, ALONG WITH THE RIGHTS, COMES A RESPONSIBILITY FOR CARE AND STEWARDSHIP OF THE RESOURCES. WITH THE ASSISTANCE OF OUR TRUSTEE, THE UNITED STATES, WE HAVE BUILT A STRONG RESOURCE MANAGEMENT PROGRAM, COMPLETE WITH ENFORCEMENT AND TRIBAL COURTS, TO TAKE ON THIS RESPONSIBILITY.

IN THIS REGARD, WE HAVE FOLLOWED A COURSE PREVIOUSLY TAKEN BY THE TRIBES OF THE PACIFIC NORTHWEST AND COLUMBIA RIVER BASIN. IN THE PAST DECADE, THESE TRIBES HAVE DEVELOPED INTO A POWERFUL FORCE FOR THE RESTORATION AND SOUND MANAGEMENT OF ANADROMOUS FISH STOCKS, INCLUDING STEELHEAD. THERE IS EVIDENCE OF THEIR SUCCESS IN THE RECENT RECORD RUNS OF STEELHEAD IN THE COLUMBIA RIVER. WE CAN ONLY HOPE TO BE AS SUCCESSFUL IN RESTORING GREAT LAKES FISHERIES, WHICH WERE ALSO ABUSED AND DEPLETED BEFORE TRIBAL MANAGEMENT PROGRAMS WERE IN PLACE.

STEELHEAD ARE NOT THE MOST IMPORTANT FISHERY TO THE GREAT LAKES TRIBES, BUT THEY ARE FAIRLY COMMON IN THE CATCH. IN THE GREAT LAKES, STEELHEAD ARE ONE OF SEVERAL SALMON AND TROUT SPECIES THAT INHABIT NEARSHORE WATERS AND TRIBUTARY STREAMS. THESE FISH ARE USUALLY ENCOUNTERED BY SMALL-SCALE SUBSISTENCE GILL-NETTERS, RATHER THAN LARGE COMMERCIAL OPERATIONS. SOME OF OUR MEMBER TRIBES NOW PROHIBIT THE SALE OF STEELHEAD, WHILE OTHERS DO NOT. ALMOST ALL STEELHEAD TAKEN UNDER TREATY RIGHTS ON THE GREAT LAKES ARE CAUGHT BY GILL NET, WHICH WOULD BE PROHIBITED UNDER S. 954. ENACTMENT OF THIS LEGISLATION WOULD CONSTITUTE A SIGNIFICANT EROSION OF TREATY RIGHTS ON THE GREAT LAKES, THUS A SIGNIFICANT TAKING OF PROPERTY, REQUIRING COMPENSATION FROM THE UNITED STATES TO MANY GREAT LAKES TRIBES.

WE ARE MOST CONCERNED, HOWEVER, THAT ANY NUMBER OF OTHER SPECIES, SUCH AS LAKE TROUT OR WALLEYE, COULD ALSO BE ALLOCATED TO RECREATIONAL FISHERIES IN DISREGARD OF TRIBAL RIGHTS, POLICIES, TRADITIONS, AND NEEDS. IF CONGRESS IN ITS WISDOM DECLARES THAT STEELHEAD IS TO BE USED ONLY FOR RECREATION, AND NOT FOR THE LEGITIMATE PURPOSES OF INDIAN TRIBES, WHY NOT LARGEMOUTH BASS, MUSKELLUNGE, OR WHITETAIL DEER? ALL OF THESE SPECIES ARE FACING PROBLEMS FROM HABITAT LOSS, EXOTIC SPECIES, OR OVERHARVEST. IF INDIANS ARE SUCCESSFULLY USED AS SCAPEGOATS FOR STEELHEAD PROBLEMS, WHY NOT FOR OTHER SPECIES AS WELL? OF COURSE, ANY SUCH ABROGATION OF TREATY RIGHTS WOULD HAVE TO BE COMPENSATED UNDER THE U. S. CONSTITUTION.

WE SUPPORT A MORE POSITIVE COURSE OF ACTION. THE KEYS TO IMPROVING STEELHEAD FISHERIES ARE HABITAT AND COOPERATIVE MANAGEMENT. AMERICAN SOCIETY HAS BEEN DOWNRIGHT DESTRUCTIVE OF FISH AND WILDLIFE HABITAT, AND WE NEED STRONGER PROGRAMS AND SUPPORT FOR HABITAT PROTECTION, RESTORATION, AND MITIGATION. COOPERATIVE MANAGEMENT BY TRIBES, STATES, AND THE FEDERAL GOVERNMENT IS EQUALLY NECESSARY TO PURSUE COMMON GOALS. CONSTANT ANTAGONISM AMONG GOVERNMENTS, AND HEAVY-HANDED LEGISLATION LIKE S. 954 ARE COUNTER-PRODUCTIVE TO SOUND RESOURCE MANAGEMENT. PEOPLE WHO ARE REALLY CONCERNED ABOUT THE FISHERY RESOURCES WOULD LOSE A VALUABLE ALLY IF TREATY FISHING RIGHTS WERE ABROGATED THROUGH LEGISLATION SUCH AS S. 954.

IN SUMMARY, ENACTING S. 954 WOULD ABROGATE TREATY FISHING RIGHTS FOR MANY GREAT LAKES TRIBES, AND COULD SET PRECEDENT FOR SIMILAR ACTION COVERING OTHER SPECIES. ANY SUCH TREATY ABROGATION WOULD REQUIRE SUBSTANTIAL COMPENSATION TO GREAT LAKES TRIBES. MANAGEMENT OF STEELHEAD AND OTHER TREATY RESOURCES WOULD BE MORE EFFECTIVE IF HABITAT AND COOPERATIVE MANAGEMENT WERE EMPHASIZED.

INTERSTATE CONGRESS
for
EQUAL RIGHTS AND RESPONSIBILITIES, INC.
WASHINGTON STATE CHAPTER

1985 JUN 20 PM 3:26



P.O. Box 17356
Seattle, Wa 98107-0356

Select Committee on Indian Affairs
Senate Office Building
Washington, D. C. 20510

June 17, 1985

Organizations

Assoc. of Property
Owners and Residents
of Port Madison Area
P.O. Box 277
Indianola, Wa 98031

Coal & Equal Rights
Inc. 451
P.O. Box 151
Tacoma, Wa 98401

Conservation Citizens for
Conservation & Conservation
P.O. Box 7
Richmond Beach, Wa 98147

Covey Harbor Pigeon Club
800 River View Dr.
Abbotsford, Wa 98006

Covey River Steelhead
Trotter Club
26400 22nd Pl. S.E.
Kent, Wa 98032

Covey River Property Owners Assoc., Inc.
P.O. Box 1286
Fremont, Wa 98148

Pigeon Sound Collaborative Assoc.
C. J. Kelly, Fisherman's Term
Seattle, Wa 98119

Quinn's Property Owners
Assoc., Inc.
P.O. Box 887
Abbotsford, Wa 98006

Seagrass River Trout Assoc.
P.O. Box 212 W. Nisqually
Sedro Woolley, Wa 98284

Steelhead Trout Club of Wash.
Seattle Chapter
1212 Pacific Bldg.
Seattle, Wa 98104

Washington Trout Assoc.
P.O. Box 771
Fort Angeles, Wa 98344

Wildcat Steelhead Club
P.O. Box 435
Sedro Woolley, Wa 98284

Gentlemen:

I hope the members of your Senate Committee will live up to their oaths of office as provided in paragraphs 2 and 3 ARTICLE VI of the United States Constitution and support Senate Bill 954, the Steelhead Protection Act.

It's high time that the members of the U. S. Senate and House of Representatives, as well as all of our Federal Judges, begin to live up to the principles on which this Nation was founded (Equal Rights for All Citizens), before it drifts further into the abyss in which numerous eastern nations are mired.

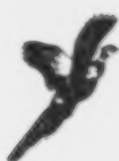
Greatly concerned,

Ken McLeod
Ken McLeod
6841 31st Ave. N. E.
Seattle, Wa. 98115

A NONPROFIT CORPORATION CREATED TO INSURE THAT ALL CITIZENS OF THESE
UNITED STATES SHALL ACHIEVE EQUAL RIGHTS AND BEAR EQUAL RESPONSIBILITIES
UNDER THE LAW

ORGANIZED IN TWENTY ONE STATES OF THE U.S.A.

King County Outdoor Sports Council



King County Outdoor Sports Council
217 SW 142nd
Seattle, Washington 98146

Senator Mark Andrews, Chairman
U. S. Senate Select Committee
on Indian Affairs
Washington D.C. 20510

July 5, 1985

Dear Senator Andrews,

The twenty-three clubs, representing 8,000 members of the King County Outdoor Sports Council, of King County, which includes Seattle and 75% of our states population, wish to thank you for hearing S.B. 954. We respectfully request that your committee recommend to the Senate the passage of S.B. 954, and that the members use their influence to encourage the passage of Representative Al Swifts companion bill in the House.

The citizens of the State in 1925, worked through our legislature to give the steelhead trout the status of state game fish, making steelhead a non commercial fish. Placing the steelhead in the same category of protection as bass under the Black Bass Act, now known as the Lacy Act, which prohibits the inter/intra state transportation of those fish for sale. The citizens of the state in 1984 reaffirmed this position by State Initiative 456, with a 53.2% plurality. This vote represented the feelings of all the citizens of the state not just the sportsmen.

In 1974, Federal District Judge George Boldts' still controversial decision of his interpretation of the phrase "in common with" from the 1850's Indian treaties, gave the Treaty Indians of Washington State the right to commercially harvest this fragile and limited resource. This decision is being used in many other states on conservation issues to the detriment of the natural resources of our nation.

After ten years of working under this decision the state is being forced into an untenable steelhead harvest management and enforcement practice, that is associated with commercial management of salmon, and which has caused many of those stocks to be declared non-viable. Non-viable means the wild stock is not protected, and watersheds are being managed for hatchery stocks only, without any wild stock programs.

Under the present system, unless the problem is addressed, the steelhead trout is faced with the plight of the eagle and peregrine falcon among others of our nations

endangered species. Don't let this happen, help us by supporting S.R. 454 so that our future generations can enjoy the steelhead trout, as we have in the past. The wildlife and natural resources of a nation, should be shared equally by all citizens.

Conservationally yours,

Tom Lewis

Tom Lewis, President

TELEPHONE 206-374-6163



QUILEUTE TRIBAL COUNCIL

POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350

June 19, 1985

Senator Mark Andrews
Senate Select Committee on Indian Affairs
724 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Andrews:

This letter is in reference to S.954 - "A Bill to Provide Additional Protection to Steelhead Trout as Gamefish". The Quileute Tribe views this piece of legislation as a direct threat of abrogation of treaties of more than twenty Indian Treaty Tribes in the Northwest. We do not encourage your support of this bill. The bill is neither appropriate nor justifiable if the intent is to provide protection to an endangered stock. Indians have been blamed for decline in steelhead runs through their commercial take, but there is absolutely no truth to that statement. There is also no valid biological or social basis for decommercialization. The greatest losses of steelhead are created from man made environmental problems i.e., dams, pollution, habitat degradation, just to name a few.

To terminate, modify or prohibit tribes from taking steelhead for commercial purposes would be like telling a cattle rancher he could no longer sell cattle for beef products but could use them for rodeo purposes only. An economic dislocation would be created to the point of making welfare recipients of once proud Indians. The burden then would become the States problem to give relief for loss of a large part of the Tribes livelihood.

All joint Tribal/State participation in steelhead enhancement would come to a halt in the entire Pacific Northwest if this bill passed. Statistics show that enhancement efforts that are being supplied by the tribes are making significant contribution to both recreational and commercial fisheries.

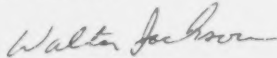
For the last two years there has been significant progress in cooperative management. The "new era" of State/Tribal cooperation has led to avoidance of litigation and court advisory decisions. Adversarial roles have been a thing of the past with regard to management for both salmon and steelhead. This cooperation would also come to a halt if the bill passed.

Statistics show that steelhead runs are healthy today and not on a decline as you may be lead to believe.

Senator Andrews
June 19, 1985
Page 2 of 2

We strenuously urge you not to support this bill.
Decommercialization is not in the best interest of cooperative
management, nor for the protection of steelhead but rather is another
form of bias and discrimination.

Sincerely,



WALTER JACKSON
Chairman
Quileute Tribal Council

WJ:cc

061429/1284

TECHNICAL PERFORMANCE AFFIDAVIT

06 DEC 1984

attachment to

211415/0984

FISHERY MANAGEMENT AGREEMENTS

Quileute Indian Tribe/State of Washington

Synopsis of the Record

United States of America vs. State of Washington
et el, Civil No. 9213

Fishery Advisory Board

(Litigative material),
confidential

by

Christian Penn, sr.
William Blair Grubb

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WILLIAM BLAIR GRUBB; CHRISTIAN PENN, SR., having been first duly sworn to oath depose, and state the following:

The steelhead gill net fishery is a viable traditional fishing practice of Quileute people, however, it is not being managed on a basis of pounds of fish harvested by Quileute livelihood fisherman, with the objective of taking 1/2 of all steelhead harvested.

Subsistence Ceremonial fishing practices of the Quileute fisherman should be immediately restored to a viable schedule, applying each person's inherited right to carry on traditional food gathering, and private ceremonies.

Emphasis on fish run and supportive habitat restoration, in lieu of "enhancement", will protect the fishery from further depredation by management. There are no surplus steelhead. Active spawning grounds of wild steelhead are being over fished by trophy fisherman.

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William Blair Grubb

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The program fishing schedule and statistics presented in the "optioned" 1984-85 steelhead fishery management model for the Quileute river system in conjunction with other existing programs does not depict a viable status definition of upper system wild spawning steelhead population groups indigenous to specific niches.

Three (3) major hatchery steelhead runs will return to the Quileute river system, programmed below the moderate living needs of livelihood fisherman, beginning in October continuing through June 1985. Several significant wild steelhead families will osilate in specific index regions of the system, with population accumulations.

The wealth of the traditional livelihood, subsistence, ceremonial fisheries will continue to diminish, while the commerce wealth of the recreational angler fishery will increase, benefiting from the same target fish runs. The fishery will perform above moderate living needs, except for the gill net, and other inherited fishing practices.

The fishing schedule options A, B, C, D, E of the proposal have been integrated with a single sport fishing management design. The options are not intuitive and are primarily designed for acceptance by departmental personnel of the state. The schedule does not stratify the fishing periods with emphasis on the viable potential in terms of management sensitivity and quality food product distribution to the market place. The proposal is responsive to concepts of opportunity realization. The actual sport take of hatchery and wild steelhead will be delineated in normal commerce habits, and a maximized trophy fishing period on active spawning areas.

SPECIFICALLY:

A) The estimated wild fish escapement values presented in the proposal will not be achieved, nor has that specific wild steelhead escapement level of indigenous stocks existed in measured survey index areas, historically.

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William Blair Grubb

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B) Surplus fish stock transfers are not calculated into the harvest rate determination values.

C) The proposed management period is not inclusive of the total biological fish run timing.

D) Total biological exploitation rates can not be determined from the proposed model fishery and accounting system.

E) Sport angler harvest rates remain constant in all options.

F) Pre-season and post-season bonus harvests will be realized by sport anglers that will not appear in accounting statistics.

G) The surplus salmon carcass study initially began by state departmental personnel is significant to the steelhead distribution relative to current index population levels and immediate sport angler effort pattern in the Quileute river system. The basic purpose of the study appears to be to decoy various species to pre-recognized indexing areas. The decoy effect, theoretically, is designed to bring about changes in observed utilization of index river regions, including index species of fish, the popular eagle, racoons, etc. The results will indicate a high utilization of the carcasses by seagulls, and will require specific examination and qualification as to any masking effects statistically imposed on other resource status inventories initiated by congress.

The behavioral modification of all river life dependencies should be carefully examined, and particular attention should be given to the steelhead. It is probable that premium sport angler target fishing locations, aesthetic and scenic geographic areas will be effected, such as the upper region of the Sol Duc river, in so far as the adult fish run this season is concerned if the results of the study are achieved as prescribed.

The performance of the Eagle creek enhancement program and the Bear Springs hatchery satellite operations interface

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William Blair Grubb

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06 DEC 1984

with the study. The enhancement program - disposition of surplus carcasses - will not mask overall environmental depredation because the intricate complexities, specific biological requirements, their relationship to symmetry, inclusive of the forest's filtration and nutritional contributions, characterize each stream niche.

H) The statistical artifact produced by the recommended late season fishing schedule of three (3) days per week may suggest that the gill net fishing practices do not endanger a discrete run of wild steelhead moving through the terminal area intercept target...according to the statistics presented.

SIGNED:

Christian Penn, sr.
Christian Penn, sr.

William Blair Grubb
William Blair Grubb

AFFIDAVIT OF - Christian Penn, sr. - page four of 4 - 061429/1284
William Blair Grubb

212129/0584s
AFFIDAVIT OF MAILING

SPECIAL RESOLUTION BY NATIVE PEOPLE
OF THE NORTHWEST
Nineteen-Hundred Eighty-Four
NOTICE
111007/0584s

TO:	P 670 367 244	P 670 367 245
	P 670 367 246	P 670 367 247
	P 670 367 248	P 670 367 249
	P 670 367 250	P 670 367 251
	P 670 367 252	P 670 367 253
	P 670 367 254	P 670 367 255

212129/0584s, enclosure 111007/0584s is a discrete communication transmitted in good faith, for the examination of enclosure 111007/0584s, and action in response to it. Addressees are held accountable. All interpretative analysis of 212129/0584s, & 111007/0584s is invalid, except as provided for and by the translating authors. Summarization of 111007/0584s is prohibited, except as provided for and by the authors.

I, William Blair Grubb; I, Christian Penn, sr., have caused true and correct copies of 212129/0584s, AFFIDAVIT OF MAILING, & SPECIAL RESOLUTION BY NATIVE PEOPLE OF THE NORTHWEST Nineteen-Hundred Eighty-Four NOTICE 111007/0584s to be mailed via United States Postal Service carriers to the above CERTIFIED addressees.

William Blair Grubb

Christian Penn, sr.

William Blair Grubb

Christian Penn

Done this 23 day of May, 1984,
at Forks, Washington.

end - 212129/0584s

SPECIAL RESOLUTION BY NATIVE PEOPLE
OF THE NORTHWEST
Nineteen-Hundred Eighty-Four

Notice
111007/0584s

WHEREAS, We are people, living with the Earth, Sky, and Waters, and all things that behold this place; and our children shall not have contempt for us; and,

WHEREAS, We practice life, and 'regard' the natural animals of this place, and their need to act naturally with one another; and,

WHEREAS, We recognize exclusive fishing places, and fishes, as it was, is now, and will be irrespective of any legal assertions, governmental attachments, and experiments; we are maintaining paramount title by & through our practices, and original identity; and,

WHEREAS, Our identity significantly and absolutely attaches 'each' of us to the water flowing in fishing places, all things that carry it and 'natural objects' within and surrounding it. Each family maintains and insures a real property right in fishing places, and fishes; and,

WHEREAS, Each 'family', each 'natural person' exercises the right to life, practicing the arts of fishing in exclusive fishing places, such as netting, spearing, gaffing, trapping, and bow & arrow capture, all skills inherited from the original people of this place; and,

WHEREAS, We recognize 'sport management interests' are incapable of purposing 'compensatory statutes' that will preserve and protect Native People's unique relationship to natural wild salmon, inclusive of steelhead, because their deviated interest, is based upon performing acts of cruelty to the fishes. The State of Washington statutes are corrupt, and are prejudiced to benefit special interest sport users. (i.e. WAC 232-12-001 (10); WAC 232-12-147 (1)(2)(3); RCW 77.16.060; WAC 232-12-154; WAC 232-12-071; WAC 232-12-087, Selective Fisheries Rules c; a,b,c,d,e,f; WAC 232-28-607; WAC 232-28-608; WAC 232-28-609; WAC 232-28-610; WAC 232-28-611; WAC 232-28-612; WAC 232-28-613); additionally the Washington State Game Commission, the Department of Game Director, their agents cooperate with special interest sport users to gain total possession and control of the fishes called trout;

(continued)

SPECIAL RESOLUTION BY NATIVE PEOPLE
OF THE NORTHWEST
Nineteen-Hundred Eighty-Four

Notice 111007/0584s - continued

WHEREAS, We recognize that the United States, the State of Washington, the Washington State Game Commission, the Director of the Washington State Department of Game have not acquired jurisdiction over our wild fish broodstock, therefore, we continue paramount title, and original jurisdiction of the wild fishes, to the extent that they may be deemed sacred objects to us, and apply the limitations of the Constitution of the United States of America to all fisheries authorities under its rule; and,

THEREFORE BE IT RESOLVED, We CENSURE the Washington State Game Commission's role in the on going process of legislative PRE-EMPTION of our identity, and fishing practices; and,

BE IT FURTHER RESOLVED, We CENSURE the scientific fisheries works of fisheries management and research personnel, who possess Washington State Sport Fishing Licenses, and Sport Fishing Punch Cards, whether their action be laying hands upon the wild fishes for purposes of enhancement and fish stock transfer 'surplusing' through hatchery operations, regardless of Federal, State, or Tribal employment status; and,

BE IT FINALLY RESOLVED,

"By our written signatures, below, Each of us make it known, and publish that we CERTIFICATE our FISHING PLACES as - those places which we inherited & practice fishing in; and CERTIFICATE the wild fishes of these places as - exclusive species, having sacred characteristics and meaning to us, and our unborn children yet to be fisherman."

Christian Penn III
Lillian Penn
Servio Penn
Allen J. Block
Christian Penn Jr.

Thomas Penn
Lillian Penn

Notice to: Gov. Wa. State
Supv. BIA
Wa. State Attorney Gen.
Wa. State Game Comm.

Translation Certification
Will Over-Brad Press
111007/0584s

FISHERY MANAGEMENT AGREEMENTS
Quileute Indian Tribe/State of Washington
211415/0984

Synopsis of the Record
United States of America vs. State of Washington
et al, Civil No. 9213
Fishery Advisory Board

by

Christian Penn, sr.
William Blair Grubb
STAR ROUTE 2 BOX 124
FORKS, WASHINGTON 98331

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of the authors.)

SUBMITTED TO

Honorable Malcolm Baldrige
Secretary of Commerce
Herbert C. Hoover Building
14th Street & Constitution Avenue North
Washington, D.C. 20230

FISHERY MANAGEMENT AGREEMENTS
Quilleute Indian Tribe/State of Washington
211415/0984

Synopsis of the Record
United States of America vs. State of Washington
et al, Civil No. 9213
Fishery Advisory Board

PREFACE

The Fishery Advisory Board of the United States District Court, Western Washington District, its subsequent chairman, have delivered upon demand true, accurate, and complete records of the authorized meetings concerning the Quillayute river system, and performing fisheries significant to its jurisdiction. The documents remain in the Northwest Subsistence Fisherman's Association archives, and are available for examination by all fishing families.

SYNOPSIS

The federal court case, US vs. Wash., Civil No. 9213, called the "Boldt Decision", was a judicial cause affected by previously conceived and negotiated fishery resource re-allocation plans, existing outside the knowledge of the court. The institutional instruction, placement of personnel and the implementation of overall changes politically, judicially, technically and economically were essential interim actions designed to reduce the northwest commercial fisheries, and enhance the commerce interest in the northwest recreational fisheries. The jurisdictional assimilation of "Indian" fisheries was a necessary component part of the re-allocation plans which could not be accomplished by overt force due to political circumstances existing in the United States.

Synopsis of the Record - page one of 16

Synopsis FAB Agreements 211415/0984 - page two of 16
Quileute Indian Tribe/State of Washington

Based upon technical performance affidavits, the existing "Indian" fleet & respective fishing gear inventory did not threaten the wild fish populations with extinction; the contemporary changing "MASS MOBILE" performance characteristic of some tribal fisheries, including 'ocean ranching' harvests posed a serious competitive threat to fisheries organized under the authority of Washington State, and others with interest in the northwest exclusive economic zone. Each person, each fishing family had basis in paramount title, aboriginal title, and original jurisdiction. The fisheries existed with developmental potential outside the effect and control of common competitors for the fishes.

The legal cause, US vs. Wash., Civil No. 9213 resulted in subsequent actions. An "interim plan & Stay Order" was developed, along with other process, with the intent to provide a program which would enable the effected tribes to conduct orderly traditional fisheries targeting on usual fishing sites during the initial phase. The court provided that NSR (Non-self regulating) tribes would obtain expert fishery advise prior to the commencement of commercial, subsistence, ceremonial fishing practices. The court action to invoke it's jurisdiction upon subsistence ceremonial fishing practices is considered percipitous by knowledgeable native peoples. 'Experts' were those persons having credentials acceptable to the state.

The court, its subsequent Fishery Advisory Board and technical panels have been conducted in english concept, and language. Value judgements of the chairman and technical representative designates stem from institutional instruction carried out in program curriculum under the aegis of Washington state statutes. Scientific judgements have been exercised subordinate to this curriculum.

Synopsis of the Record - page two of 16

Synopsis FAB Agreements 211415/0984 - page three of 16
 Quilleute Indian Tribe/State of Washington

The Fishery Advisory Board officers of the US District Court, Western Washington District, the appointed expert witnesses of the court, and key personnel of various federal and tribal fisheries management authorities have had and some currently have academic and monetary dependencies which exist under the aegis of Washington State statutes and policy of the University of Washington.

Dr. Richard Whitney was appointed as the court's fishery advisor, inclusive of Indian fisheries, simultaneously serving as the leader for the cooperative fishery unit at the University of Washington. The unit's goal was the "enhancement" of northwest recreational fisheries.

Subsequent to this appointment as fishery advisor, Dr. Richard Whitney took part in the creation of the FAB and was appointed its chairman. Frederick E. Olney, John H. Meyer, Donald L. Cole, Allan C. Hartt and William G. Clark have served as chairman & co-chairman of the board in chronological order. The board's primary objective has been to get agreements between specific designated representatives of Indian Nations and state departmental officials. The framework & criteria for issues presented to the board were predetermined. Technical issues, manifested within the established parameters of non-Indian concepts, value judgements, and technical performance management models developed and utilized by academic fisheries practitioners determined the changes in practicing Indian fish policy.

'Non-technical' tribal representative designates were matched against conforming technical representative designates either associated with the University of Washington directly or affiliated by academic credentials, including the conclusive recommendations of the board chairman. Non-Indian tribal technologists and non-designate participants precluded the designates roles during the proceedings.

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Quilleute Indian Tribe/State of Washington

Scientific fisheries field data was collected, tabulated, analyzed, prepared in scientific report form by sport fishing licensed technicians, biologists, enforcement personnel, & sport fisherman on the Quillayute river system and subordinate adjacent river systems. Con-junctively, non-Indian sport fishing licensed tribal bio-logists did sport fish simultaneously controlling compre-hensive formula fisheries management programs appliable to the same waters, including participation officiating the transfer of wild natural spawning fish stocks & restoration fish stocks out of the Quillayute river system to sport target fishing areas. Some State and Tribal scientific fish-eries personnel have direct affiliations with sport fish-ing clubs. Non-Indian scientific fisheries personnel have continuously promoted the use of sport fishing gear for tribal subsistence uses and promoted the capture of fish broodstock for hatchery purposes utilizing the same gear. Net & release gillnet fisheries have been encourage; and, enforced. Non-Indian tribal fisheries personnel have supplied surplus hatchery fishes to tribal membership for subsistence, ceremonial uses. Other incidents include fishing for a quota of subsistence, ceremonial fish on behalf of various select members of the tribe, pre-empting their actual fishing op-portunity.

There is no significant elementary difference in the management concepts of non-Indian tribal technologists and state technologists, or their relative statistical basis. Both are subjugated to desirable specie management schemes bound to achieve social aggregative monopolization of ex-ploitation opportunities upon desirable fish targets, with parallel deficiencies concerning environmental protection. Allocation accounting statistics are inconsistent and con-servation necessity escapement goals are negotiated, with hatchery and will escapement statistics mixed and corrupted in all target species.

Synopsis of the Record - page four of 16

Synopsis FAB Agreements 211415/0984 - page five of 16
 Quileute Indian Tribe/State of Washington

The concept of 'moderate living needs', and a preeminently effective moratorium upon the harvest of desirable sport species, the chinook salmon, and steelhead salmon, has been applied to the traditional "Indian" harvest of fishes, as well as the harvest of natural spawning fishes, however, social class fishing opportunity is being delineated upon sport trophy target wild species.

The Quileute Indian Tribe's Fishery Resource Sharing Principles adopted by the tribe, and filed with the United States District Court, Western Washington District, during the Phase I process, addressed fishery trade commerce management upon a basis of pounds of fish yielded, an essential element of a 'food production' fishery. The non-Indian tribal technologists have negated the application and effect of the principles and now address tribal fishery commerce management upon a basis of numbers of fish yielded to the harvester, an encompassing prerequisite to recreational fisheries commerce management. The statistical bias is favorable toward opportunity realization, rather than product yield. Fish sales per receipt, derivative harvest per gear unit performance ratios and accumulative test fishery pattern performances are equivalated with accelerating sport fleet performance dynamics characterized by diminutive unit effort numerical coefficients.

Statistical variables, there numerical coefficients are being tested to determine favorability with established common social, judicial, technical principles applicable to formula fisheries management programs on a permanent regional basis. The precision of the exploitation, and harvest rate determinant model is limited to terminal area parameters. Harvest interception coefficients are incremental and contingent upon 'greater interest' mentality.

Synopsis of the Record - page five of 16

Synopsis PAB Agreements 211415/0984 - page six of 16
 Quilleute Indian Tribe/State of Washington

The process of 'agreement' is the only means whereby legislative pre-emption of Treaty Fishing Rights may occur. The Quilleute fisherman and the state must demonstrate that they are conforming to one another in areas of policy, technical principle and law. Once these essential criterion have been negotiated and agreed upon, then 'compensatory' statutes can take force and effect. The necessity of a treaty exists only when there are adverse interests. The implementation of common principles to govern and coordinate management and 'enhancement' activities shall render the hunting and fishing treaty with the "Indian" obsolete.

As per 'report of the Salmon and Steelhead Advisory Commission' by John R. Donaldson, William Wilkerson, Jerry M. Conley, Gary S. Morishima, William Yallup, Thomas E. Kruse, John P. Harville, Frank R. Lockard, Gary W. Peterson, Bill M. Bakke, Richard R. Whitney, Wally Steucke, & Executive Director Peter K. Bergman, the Salmon and Steelhead Conservation and Enhancement Act provided nine principal objectives and standards for the new management structure to be recommended by the Salmon and Steelhead Advisory Commission.

First, develop common principles to govern and coordinate management and enhancement activities; Second, prevent over-fishing (hatchery harvest-excluded); Third, use to best scientific information available; Fourth, consider and allow for variations among and contingencies in fisheries and catches; Fifth, produce harvest strategies and regulations that will encourage continued or increased investment by salmon-and steelhead-producing jurisdictions; Sixth, make the best possible use of resources for enforcement; Seventh, consider harvest activities in the context of existing and anticipated international commitments; Eighth, minimize costs and avoid unnecessary duplication; Ninth, ensure the treaty tribes ability to harvest fish in accordance with their treaty rights, unless the tribes themselves agree to do otherwise.

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Perspective to those inalienable rights beyond the judicial powers of the 'constitution', an exclusive provision has been made by treaty to reserve the cultural performance of original people, their taking of fishes, in accord with heritage in the northwest. The process of change is inclusive of judicial assimilation art form "Indian Treaty Fishing Right", the "Boldt Decision" United States vs. Washington, Civil No. 9213, to Tribal Fishing Rights. The technical frame work is tribal fishing right, with membership 'privileges', encompassing social, judicial, technical aspects of the aboriginal people's domain. The use of 'social ringers' is apparent in respective communities, and in cases involving the Fishery Advisory Board. Tribal authorities motivated by management ease have delineated policy & effective plans toward fishing 'privilege'.

The court held in 'findings of fact', United States vs. Washington, Civil No. 9213, that the State of Washington had "Set Aside" the steelhead fishes as a recreational attraction. They have remained "set aside", without certification, except as cited by "Notice 111007/0584s, SPECIAL RESOLUTION BY NATIVE PEOPLE OF THE NORTHWEST, Nineteen-Hundred Eighty-Four" (AFFIDAVIT OF MAILING 212129/0584s & USPS certified receipts), which FINALLY RESOLVED, "By our written signatures, below, Each of us make it known, and publish that we CERTIFICATE our FISHING PLACES as - those places which we inherited & practice fishing in; and CERTIFICATE the wild fishes of these places as - exclusive species, having sacred characteristics and meaning to us, and our unborn children yet to be fisherman.". The certification was preceded by memorandum, technical affidavits, testimonies, notices, service documentation, complaint, reports, resolutions, special resolutions, investigative requests, consistency determinations, & news releases supporting the priority of the issue, as partially documented in the NORTHWEST SUBSISTENCE FISHERMANS ASSOCIATION LIVELIHOOD PERSPECTIVUS (INFORMATION COMPENDIUM) 1978-1982, pages 1 thru 300.

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Notable record attempts were made by the Fisheries Management Program Director, Quileute Indian Tribe, under Tribal council & Fish Committee advisement & at meetings conducted under the aegis of the 'court', as early as 1975, to establish a "Treaty Fish" classification upon the steelhead fishes. This was proposed equitably to the effected Washington State departments, and the court fishery advisor.

The communication types on page seven were substantiated by registered, certified, and certified return receipt requested via USPS services. All Tribal, State of Washington, and United States government agency parties were made aware of the issue, and statements supporting it, as per certified mail. Additionally, first class mail deliveries were made to other witnessing, and interested parties, extending to the UN Assembly. It is evident, from the FAB records, that the issue has been avoided, averted, ignored, concealed simultaneous to promulgation of common policy with recreational mandated agencies of Washington State, and the inception of "Indian sport fishing regulations", subsequently the use of gear type technically compatible with 'sport angler' fishing. The weight of FAB policy appears to be aimed, since its creation, at the common principle of setting aside the steelhead fishes as "game fish", including special geographical target regions once occupied by native people, now occupied by 'mass mobile' sport anglers. In addition to the written materials archived in NWSFA files, the "Indian" together with the "Non-Indian" co-chairman of the association exercised an uncommon perspective, entitled "Status Observations of Native American & Settlers Fishing Places", 1977 thru 1983. The photographic journal included: a) residual environmental impacts; b) forest product exploitation targets; c) recreational & residential real estate development targets; d) mass mobile sport fleet targets, intensive use areas, including sport guide fleet activity inventories at active wild steelhead spawning areas;

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e) phased relocation practices on Indian people from riverside living places to remote places; f) and, the actual physical changing of inherited exclusive fishing locations. The NWSFA information compendium, the photographic journal, and all other information varify the facts.

Previous to the 1982-83 fishing seasons normally to occur in the Quillayeute river system, the FAB chairman was experiencing difficulty in obtaining common management principles, and agreement between the tribe and the state of Washington's Game Department. The issue of 'agreement' was manifested before the 'court'. Judge Walter Craig, US District Court, Western Washington District, ordered the fishing closed in the river system until an agreement was made. On April 20, 1983 201905/0483, Christian Penn, sr., and William B. Grubb jointly brought their concerns before the Judge, in writing, with copies delivered to US Supreme Court Justices: William J. Brennan, Jr., Thurgood Marshall, Lewis F. Powell, Jr., Sandra Day O'Connor, Byron R. White, Harry A. Blackman, William H. Rehnquist, John Paul Stevens, III, the US Justice Department, & President Ronald Reagan. The deliveries were made by USPS services. The notice informed the Judge that they would not respect the order, having examined the 'closure', and the 'agreement' requirement as a means of irregular and improper judicial force, further stating that the processes of the court appear to be special, disregarding normal documentation of emergency or otherwise 'conservation' necessity aimed at protecting and preserving a right, and a resource. There was no material fact presented or existing to justify the action of the court based upon public endangerment, nor eminent misconduct or unlawful behavior upon the part of fisherman or other persons. It was further stated that the closure, and steelhead management agreement requirement was a forceful and coercive instrument of malice.

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The order continued in effect until the tribal officials, with preplexing designations, made agreements with the departmental officials of the state. The actual immediate effect of the closure was anticipated, similarly to the basic management strategy of the Washington State Department of Game involving steelhead fishes of the Quillayute river system. The numbers of fish accumulated, during the closure, in the river system sport target geographical areas providing a "piggy bank" harvest opportunity for sport anglers, while tribal fishing families endured a non-viable subsistence/ceremonial fishing schedule. During the pendency of the court's jurisdiction in this case area, there appears a continuing deficiency upon the part of the respective biological staffs to produce 'hard statistical data' concerning exploitation, fishing, and accumulative harvest rates for sport anglers on a in-season, seasonal, and yearly basis, however, full recreational fishing opportunities are provided for under the aegis of department of fisheries salmon regulation & department of game steelhead fishing regulations. The regulations are arranged in a manner to provide commerce opportunity and recreational opportunities all year around. The realization of a hard data base is anticipated to occur in phases coincidental to the extinguishment of the gill net fisheries.

Various representative designates, and meeting participants have complained that the FAB meeting records have not been presented to them for approval, additionally there has been complaints as to accuracy of some of the statements, and omissions of other statements not appearing in the records, that were specifically important to the native people attending the meetings.

As stated on page three of this synopsis, non-technical tribal representative designates were matched against conforming technical representative designates, holding academic credentials. The following summarizes, in part, the relationships, and some exemplification of agreements made:

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The time, and location of the FAB meetings were questionable by various representative designates, and participants. Notification processes were also questioned. It is prefaced that some agreements were titled, or directly implied. In some instances preliminary contacts precluded the continued forum on particular issues.

FAB-80-25 (October 10, 1980)

Quillayute River Coho and Chinook Fishery

Representative designates: Dan Payne - Non-tech. (T)
 Bill Hopley - Tech. (S)

- 1) formula management by number of species.
- 2) Separated management of hatchery & natural coho.
- 3) Joint spawning ground escapement surveys.

FAB-81-2 (January 9, 1981)

Quilleute Steelhead Fishery

Representative designates: Arnold Black - Non-tech. (T)
 Jack Ayerst - Tech. (S)

- 1) Board's determination of subsistence/ceremonial harvest requested by rep.
- 2) time performance/quota management of ceremonial harvest.

FAB-81-5 (January 15, 1981)

Quillayute River Steelhead Fishery

Representative designates: Chris Penn - Non-tech. (T)
 Garry Garrison - Tech. (S)

- 1) hatchery & native run allocation separate.
- 2) separate allocation Goodman creek.
- 3) Joint hatchery program.
- 4) summer & winter steelhead counted separately.
- 5) catch per sales ticket.
- 6) run size & hatchery harvest requirements.

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FAB-81-5 received substantial participation as listed
 by the following attendance roster:

Terry Wright	NWIFC	Peter Hahn	(S)
Bob Hayman	(T)	Bill Freymond	(S)
Christian Penn	(T)	Bob Gibbons	(S)
Tom Jackson	(T)	Garry Garrison	(S)
Priscilla William	(T)	Jim DeShazo	(S)
Skip George	(T)		
John Mikulecky	(T)		
Chris Morganroth	(T)		
Thomas Penn	(T)		
Butch Sampson	(T)		
Lillian Pulley	(T)		
Marvella Sampson	(T)		
Henry Morganroth	(T)		

FAB-81-7 (January 26, 1981)

Quileute Steelhead Fishery

Representative Designates: Roger Jackson - Non-tech. (T)
 Garry Garrison - Tech. (S)

- 1) Cooperative agreement between Quileute Tribe and Game Department for management of the Quileute river. (non-designate Russel Woodruff)
- 2) Information exchange:
 - a. sport catch and effort data by week & angler type.
 - b. catch & effort.
 - c. expansion factors used for creel census.
 - d. plan for use of hatchery harvest.
 - e. in-season run estimate using sport model.
 - f. stock transfers from Quileute river system.

FAB-81-7 received substantial participation as listed
 by the following attendance roster:

Chris Morganroth	(T)	Jim Nielsen	(S)
Roger Jackson	(T)	Bill Freymond	(S)
Terry Wright	NWIFC	Garry Garrison	(S)
Sue Hvalsoe	(T)	Robert Gibbons	(S)
Bob Hayman	(T)	Peter Hahn	(S)
Priscilla William	(T)		
Russell Woodruff	(T)		

FAB-81-10 (April 15, 1981)

Quillayute River Spring Chinook and Steelhead Fishery
 (continued)

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Representative Designates: Priscilla Williams - Non-tech. (T)
 Garry Garrison - Tech. (S)

- 1) Jointly developed steelhead management plan.
- 2) Tribe requests steelhead and salmon management be delt with separately.
- 3) Hatchery fishes allocated to escapement.
- 4) Gill net hatchery broodstock fishery for state hatchery.
- 5) negotiated wild escapement statistics.

FAB-81-10 received substantial participation as listed by the following attendance roster:

Priscilla Williams	(T)	Garry Garrison	(S)
Chris Morganroth	(T)	Frank Haw	(S)
Guy McMinds	(T)	Morris Barker	(S)
Bob Hayman	(T)	Bill Wood	(S)
Scott Chitwood	(T)	Bob Gibbons	(S)

FAB-81-15 (June 30, 1981)

Quillayute Summer Steelhead and Summer Chinook Fishery

Representative Designates: Skip George - Non-tech. (T)
 Frank Haw - Tech. (S)

- 1) Summer chinook determined incidental to summer steelhead fishery by tribe.
- 2) Summer chinook determined incidental to early fall coho.
- 3) Tribe provides for mesh size fishery.

Others participating were Bob Hayman and Chris Morganroth for the tribe and Morris Barker and Bill Wood for the state.

FAB-81-21 (July 28, 1981)

Quinalt, Hoh and Quilleute Tribe's request for a Fishery Advisory Board Meeting with the Department of Fisheries

- 1) technical consensus of ocean interceptions effect on north coastal fish stocks.
- 2) extent of the FAB over intercept fisheries.

The participation for FAB-81-21 is unclear, however, the following are listed: Jim Harp, George Dysart, Frank Haw, Don Carr, Susan Hvalsoe, James Johnson, Douglas Ancona, R. Schmitten.

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FAB-81-31 (September 17, 1981)

Quillayute Summer Coho Fishery

Representative Designates: Chris Penn - Non-tech. (T)
 Frank Haw - Tech. (S)

- 1) negotiated coho run size estimates.
- 2) spawning escapement post-season escapement evaluation.
- 3) enhancement activities must be agreed to by both parties.

FAB-81-31 received additional participation as listed

below:

Scott Chittwood (T)	Bill Wood (S)
Jim Heckman (T)	Morris Barker (S)
Bob Hayman (T)	

FAB-81-46 (December 15, 1981)

Quillayute River Steelhead Fisheries

Representative Designates: Chris Morganroth - Non-tech. (T)
 Jack Wayland - Tech. (S)

- 1) tribe would allow twice the number of steelhead required for meeting the needs of the Quillayute system (330) to return to the Bogachiel rearing ponds.
- 2) the tribe would rather fish over a longer time period and that it was agreeable to the tribe if the Game Department did not plant a specified number of additional fish.
- 3) stock transfers out of the system affected the moderate living needs of the tribe, which was in opposition to the Phase II rulings of the court. Moderate living needs determination on steelhead.
- 4) Game department states fishing efficiency not what "equal opportunity" requires for sport fishing.
- 5) "block of fish" management requirement for sport angling.
- 6) tribe agrees upon number of broodstock eggs for WDG region no. 6 out of system stock transfers.
- 7) joint steelhead broodstock collection from QRS; & importation of out of system steelhead hatchery stock.
- 8) Note: the 'court' had not yet ruled whether a transfer of eggs away from an active treaty fishery should be accountable to the party making the transfer. Interior dept. approved sec 13, QFO74-A5, 1976)

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FAB-81-46 received additional participation as listed below:

Bob Hayman (T) Bob Gibbons (S)

FAB-82-13 (July 22, 1982)

Quileute River Spring/Summer Chinook Salmon Fisheries

Representative Designates: 1) Chris Penn - Non-tech. (T)
2) Chris Morganroth Non-tech.
Frank Haw - Tech. (S)

- 1) extended use of evaluation fishery.
- 2) use of adult equivalency factors on intercept harvests.
- 3) common tag groups used for interception rates.

FAB-82-13 received additional participation as listed below:

Chris Morganroth	(T)	Morris Barker	(S)
Bob Hayman	(T)	Bill Wood	(S)
Tom Cooney	(T)	Kurt Reidinger	(S)
Jim Jorgensen	(T)		

FAB-82-22 (September 23, 1982)

Quillayute River Fall Salmon Management - 1982

Representative Designates: Chris Morganroth - Non-tech. (T)
Morris Barker - Tech. (S)

- 1) methods for calculating Tribal and non-Tribal coho catches.
- 2) tribal fishery managed as a conservation evaluation fishery, and management test model.
- 3) Jack fishes determination by size.
- 4) Note: The board has failed to resolve a complete elementary basis formula fisheries management, however, has technically subjugated the fisheries and managers to one another.

FAB-82-22 received additional participation as listed below:

Bob Hayman	(T)	Bill Wood	(S)
Mel Moon	(T)		
Jim Jorgenson	(T)		

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Three significant factors preventing the restoration of the native people's fishing life in the Quilleute river system and adjacent fishing places are: 1) The fishery has been technically, judicially, socially over-managed with formula fisheries tests responsive to regional concepts of moderate living needs; 2) Non-Indian state and tribal technologists have continued to practice tribal fishery commerce management upon a basis of numbers of fish yielded to the harvester in a 'food production' fishery, an encompassing prerequisite to recreational fisheries commerce management. The statistical bias is favorable toward opportunity realization, rather than product yield. (This observation was presented to tribal, state, & federal fisheries authorities in 1975 by the authors.). Fish sales per receipt, derivative harvest per gear unit performance and accumulative test fishery pattern performances are equivalated with accelerating sport fleet performance dynamics characterized by diminutive unit effort numerical coefficients; 3) The residual depletion of available potential spawning fishes by the practice of fish stock transfer surplusage. The certification of "surplus" fish considering the cultural, and economic performances of the native people's and landed people's fishery is genocide against the fishing families.

BY:

Christian Penn, sr.
 Christian Penn, sr.

William Blair Grubb
 William Blair Grubb

This synopsis is in conjunction with present & proposed management structures for anadromous salmon, inclusive of steelhead fishes, existing in the Washington and Columbia River Conservation Areas, and relative species of fish.

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Skagit System Cooperative

P.O. Box 368 LaConner, WA 98257-0368 Ph (206) 466-3450

July 19, 1985

RECEIVED AUG 02 1985

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington, D.C. 20511

Dear Senator Andrews:

Enclosed is the technical report that accompanies the written testimony I submitted previously during the July 11 hearing on S. 954. This report was referenced in my closing comments. I would like this report also to be made part of the hearing record on S. 954.

Thank you for your attention.

Sincerely yours,

Lorraine Loomis
Vice-Chairman

STEELHEAD DECOMMERCIALIZATION AND THE
SKAGIT SYSTEM

Addendum to the Statement of Lorraine Loomis
For the Sauk-Suiattle Tribe, Upper Skagit Tribe,
and the Swinomish Tribal Community

Prepared by
Robert A. Hayman, Senior Biologist
Skagit System Cooperative

To The
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
July 11, 1985

STEELHEAD DECOMMERCIALIZATION AND THE SKAGIT SYSTEM

I. INTRODUCTION

In 1981, two bills were introduced into congress, S.97-874 and HR97-2978, which would have prohibited Indians from fishing commercially for steelhead. Extensive hearings were held on the Senate bill, and the two bills were allowed to die in committee. Because the 1985 decommercialization bill, S.954, is nearly an identical copy of the previous bills, much of the testimony presented at the 1981 hearings is equally applicable to this hearing. This report, a technical analysis of the decommercialization arguments as they relate to the Skagit River System, is an update of the 1981 Skagit System Cooperative report^{1/} on the same subject.

The Skagit River System is the largest river system that empties into Puget Sound, and among Washington river systems, is second in size only to the Columbia. The Skagit is a major producer of native salmon and steelhead, and it also produces significant hatchery runs of coho salmon and steelhead. The Skagit is also home to three treaty Indian tribes -- the Swinomish Tribal Community, the Upper Skagit Tribe, and the Sauk-Suiattle Tribe -- which have treaty fishing rights on the Skagit River, as well as being home to an enthusiastic sports fishing population and a non-Indian commercial fishing fleet that is based in La Conner. These factors have made the Skagit a focal point of the sometimes-bitter fishing conflicts that are exemplified by proposals such as S.954, the 1985 steelhead decommercialization bill, a bill that vehemently opposed by the Skagit Indian Tribes.

In order to understand this vehement opposition, it is necessary to realize that to the tribes, commercial steelhead fishing is not just a fishing activity, but is also a cultural activity, a property right, and a commercial enterprise. Thus, one of the best ways to understand the tribal opposition to the decommercialization bill would be to take each argument for decommercialization and reverse it; that is, for each statement made against commercial steelhead fishing, ask whether the same wouldn't apply to sports fishing, or to non-Indian cultural activities, non-Indian property rights, or non-Indian commercial enterprise^{2/}. For example, decommercialization proponents have argued that commercial steelhead fishing should be banned because the commercial steelhead catch is supposedly minor when compared to the commercial salmon catch. However, the reverse argument could also be made; that is, that the sports steelhead catch is also only minor when compared to the sports salmon catch (or the sports bass, non-anadromous trout, rockfish, or clam catches), yet a decommercialization supporter would probably not consider that a legitimate reason to ban sports steelheading.

The reason for reversing the decommercialization arguments to apply them to sports fishing, or non-Indian property rights, is not to build a case for banning non-Indian rights, but rather to insure that Indian commercial fishing is judged according to the same standards as are non-Indian rights and activities. Since the bill proposes to deal with a perceived resource problem by restricting only one of the parties that use this resource, it is necessary, in analyzing the arguments for this bill, to consider three things: 1) whether the alleged problem does actually exist; 2) whether the proposed action

(decommercialization) will solve the problem without causing significant adverse effects; and 3) whether the problem, if it exists, couldn't be solved by alternate means, such as equal restriction of the rights of all parties.

II. ANALYSIS OF ARGUMENTS FOR DECOMMERCIALIZATION

In public statements, three major arguments are used to attempt to justify steelhead deccommercialization: 1) conservation; 2) economics; 3) management efficiency.

Conservation

Although supporters of deccommercialization have stated that one of the main purposes of deccommercialization is to conserve the steelhead resource^{2/}, that is actually not listed as a purpose within the text of S.954. Section 2 of S.954, "Findings and Purpose", does not give conservation as a pupose of the bill, and nowhere within the text of the bill is it stated either that commercial steelhead fishing is causing a conservation problem, that deccommercialization will solve a conservation problem, or even that a conservation problem exists. Technically, therefore, discussions of conservation are irrelevant to consideration of S.954, because conservation is not even cited as a purpose. Nonetheless, because of public statements connecting S.954 to conservation, it is useful to consider the relation between deccommercialization and conservation.

Discussions of conservation are assumed to apply primarily to the

wild steelhead run, and not the hatchery run. This is because the current level of hatchery smolt releases has actually increased significantly over what it was in the "good old days" of the 1960's (see Figure 1 for Puget Sound data. The Washington coast would show a similar pattern.), and the limiting factor on hatchery production is funding, not availability of eggs. Since there has been a sufficient supply of broodstock to fill hatchery needs, there could not be a fishing-caused conservation problem for hatchery runs^{4/}.

For wild steelhead runs on the Skagit System, run size data from prior to the Boldt Decision are sparse. The only data that are available are sports catch estimates and some sporadic spawner survey flights.

The trends in sports catch on the Skagit are shown in Figure 2, which was also presented for the 1981 hearings. In interpreting Figure 2, it is important to qualify that trends in catch may or may not reflect trends in abundance of wild fish. Factors other than abundance of wild fish that may affect catch include: changes in abundance of hatchery fish (see footnote 4); changes in effort due to such factors as gasoline shortages, increased license fees, or economic hardship; changes in efficiency due to uncooperative river conditions (floods or low water); and stricter regulations that directly hold the catch to a predetermined level (this factor would not start to have an effect until about 1976).

With this qualification in mind, let's assume, for purposes of discussion, that the catch trends shown in Figure 2 do actually mirror the abundance of wild steelhead in the Skagit System, from about the early 1960's until regulations controlled catch in 1976. In that case,

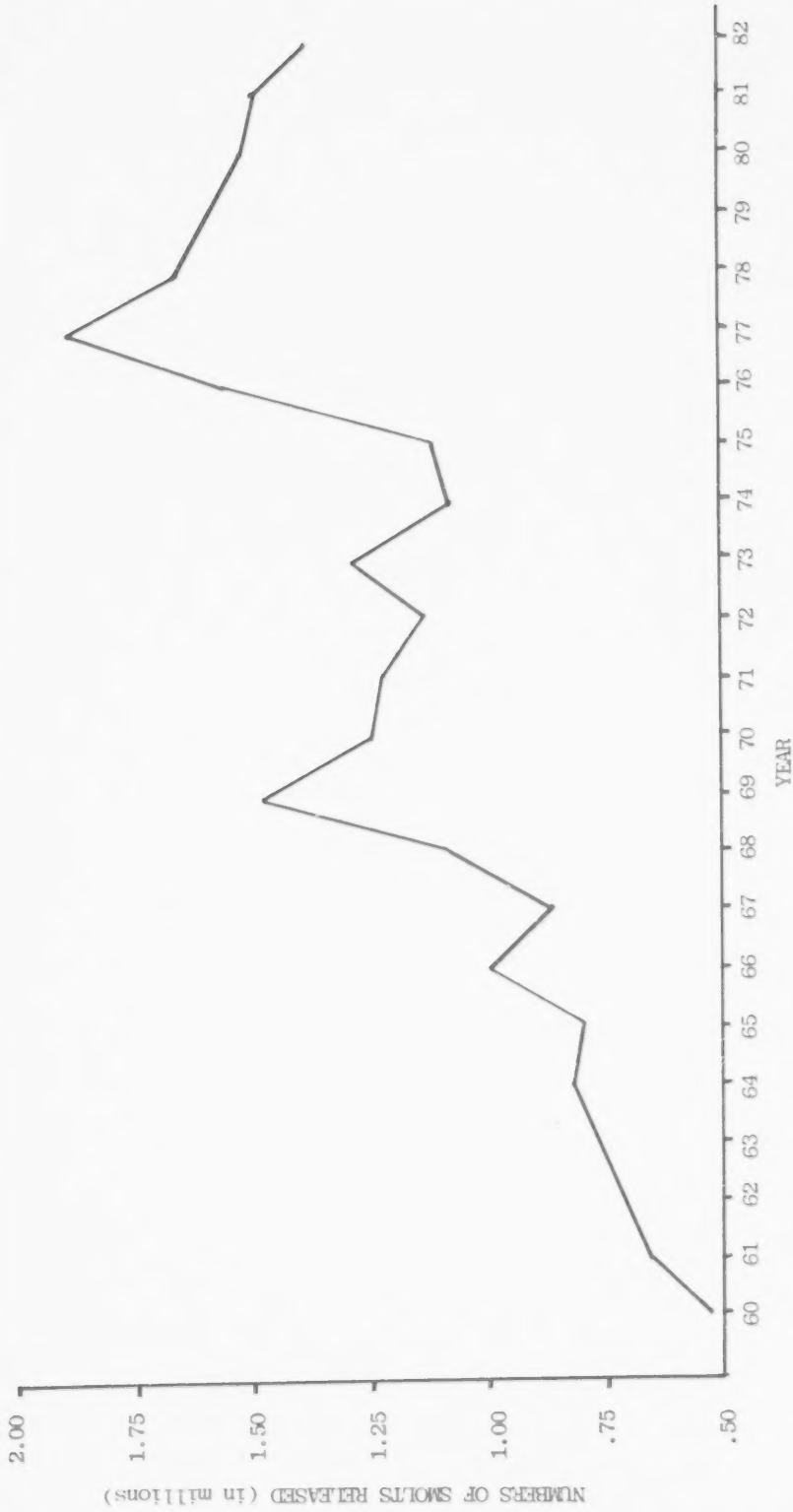


Figure 1. Artificial production of steelhead stocks in Puget Sound.

Figure 2. ESTIMATED ANNUAL STEELHEAD HARVEST

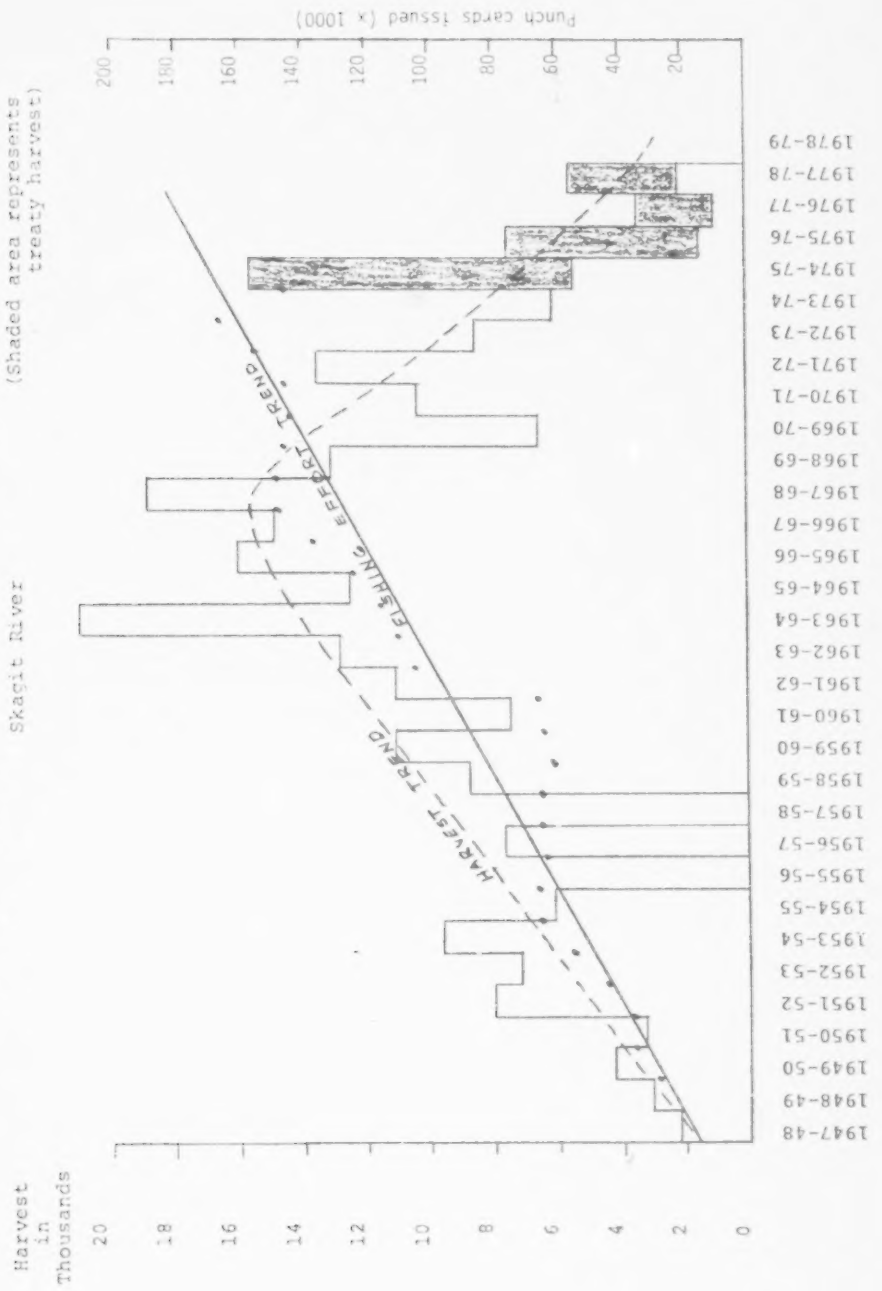


Figure 2 would show that the steelhead runs were subjected to steadily increasing sports fishing effort throughout the 1960's, that catches peaked in the mid-1960s, and that the run declined sharply after that. What is significant for this discussion is the timing of the decline -- it started several years before the 1974 Boldt Decision. Since wild steelhead mature at about 4 years of age, and Indian commercial steelhead fishing on the Skagit was negligible prior to the 1974 Boldt Decision, then if commercial steelhead fishing had caused the decline in steelhead runs on the Skagit, the decline would not have started until about 1978. The decline actually started at least ten years before that, which means that commercial steelhead fishing cannot be considered the cause of a decline in the Skagit steelhead resource.

This pattern is closely paralleled on the nearby Samish River, where catches peaked in the late 1960s and declined sharply after that (Figure 3). What is significant about the Samish is that the Samish is almost exclusively a sports-fished river -- even after the Boldt Decision there have been only minor amounts of treaty harvest on the Samish. Thus, if Indians weren't even fishing on the Samish, they could hardly have been responsible for a decline in the run there. Furthermore, since the pattern on the Samish is so similar to that on the Skagit, it is entirely possible that whatever caused a decline on the Samish was also responsible for a decline on the Skagit, and in neither case could the blame be pinned on tribal commercial fishing.

Even though tribal commercial fishing could not have been responsible for causing a decline in the steelhead run on the Skagit, it is worthwhile to examine whether continued commercial fishing would aggravate the problem and prevent its recovery. To investigate this,

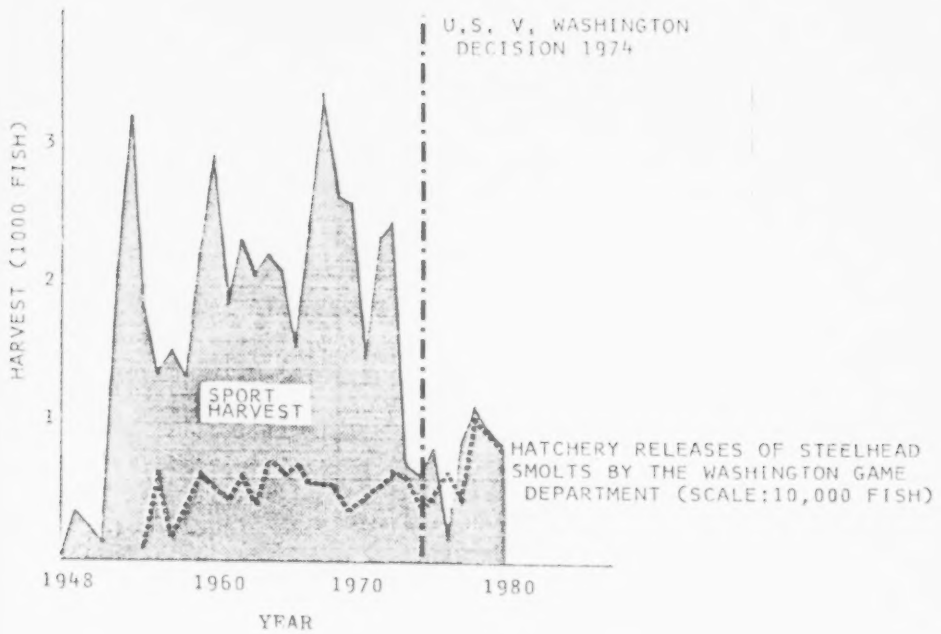


Figure 3. Sports catch and hatchery smolt releases on the Samish River System.

it is necessary to examine data on the abundance of wild Skagit steelhead after the Boldt Decision.

Data on wild steelhead runs on the Skagit have been collected only since the 1977-78 season (Figure 4 and Table 1). From these data, several important observations can be made: 1) Wild run sizes and escapements have generally been increasing since 1977-78; 2) Total exploitation on wild steelhead has generally been less than 15%, which is quite low; 3) Of the wild steelhead caught, the majority in recent years have been taken by sportsmen, not by the tribes.

Of these observations, the most significant is the increasing trend in run sizes and escapements. Recalling that the first effects of the Boldt Decision on adult steelhead returns would not be felt until 1978 (see above), the conclusion is that wild steelhead runs and escapements on the Skagit have been increasing since the Boldt Decision. This increase has been possible because in recent years it has become tribal and state policy to manage the fishery to target on hatchery steelhead, and avoid wild steelhead. This selective fishing is possible because hatchery steelhead enter the river earlier than wild steelhead, and by concentrating effort into December and January, tribal and sports fishermen can take catches that are almost entirely composed of hatchery fish. The result has been an average exploitation rate of about 85% on the hatchery run, but only about 15% or less on the wild run, and this low exploitation rate on wild fish has allowed sufficient escapement to provide steadily increasing wild runs. It should be noted that the key to this increase has been management, which was instituted only as a direct result of the Boldt Decision. Without this management, and even without a commercial fishery, the

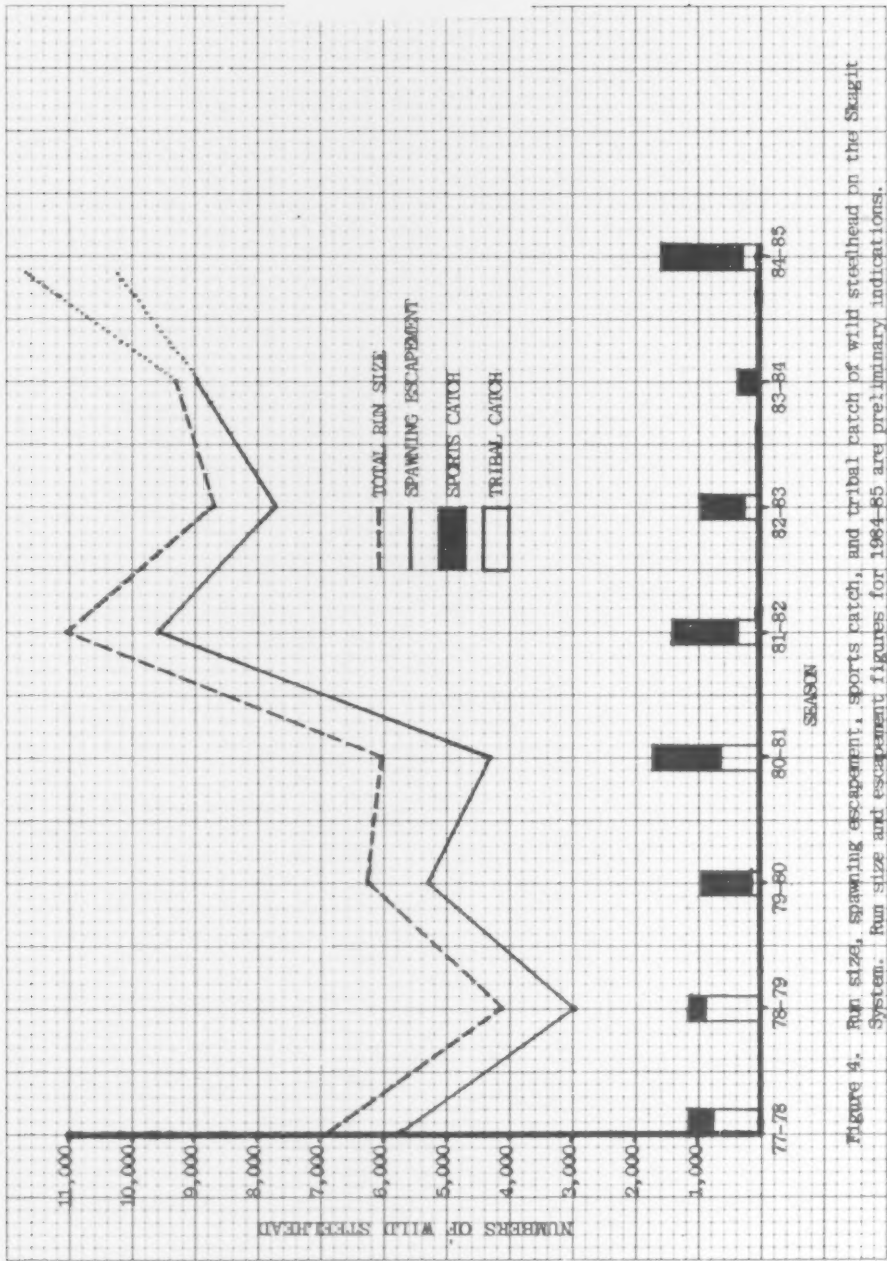


Figure 4. Run size, spawning escapement, sports catch, and tribal catch of wild steelhead on the Skagit System. Run size and escapement figures for 1984-85 are preliminary indications.

Table 1. Run sizes, spawning escapements, and catches of wild winter steelhead in the Skagit River System from 1977-78 to 1984-85. Calculations of 1984-85 sports catch, spawning escapement, and run size have not yet been completed, and figures in table for this season are approximations based on preliminary data.

Season	Run Size	Spawning Escapement	Tribal Catch	Sports Catch	Total Exploitation Rate (%)
1977-78	6915	5757	787	371	16.7
1978-79	4123	2982	901	240	27.7
1979-80	6241	5288	154	799	15.3
1980-81	6036	4308	623	1105	28.6
1981-82	11016	9609	384	1023	12.8
1982-83	8684	7732	286	666	11.0
1983-84	9338	8963	79	296	4.0
1984-85 ^{1/}	>11500	>10000	280	1300	< 14.0

1/ Preliminary.

run was in trouble (Figure 2).

But even if the wild steelhead run is increasing, what is its current status? Is it depressed, or is it now at a healthy level? This question is not easily answered, except in relative terms, because there are not yet sufficient data to identify what are the optimum escapement levels for wild Skagit steelhead (although that data should be available within a few years) -- spawning escapement goals for wild Skagit steelhead were not established until 1980, and these goals have usually been arbitrary ranges with minima varying from 7,000 to about 10,000.

What is possible is to make a rough comparison between current spawner escapement levels and past escapement levels, based on aerial spawner surveys of the mainstem Skagit and its largest tributary, the Sauk River (Table 2). These surveys were done only sporadically before 1975, visibility was occasionally a problem, and only a portion of the spawning occurs in these mainstems, but it definitely appears from Table 2 that there is no indication that current spawning escapement levels are any lower than they were in the "good old days" before the Boldt Decision, and there are indications that wild steelhead spawning levels are actually higher. This would imply that the wild Skagit steelhead run, after 10 years of commercial fishing, is presently at least as healthy, and probably healthier than it was in the years prior to the Boldt Decision.

The conclusion to these observations is that on the Skagit, a commercial and sports steelhead fishery are co-existing without detriment to the health of the wild run, which, in fact, is increasing, despite claims by decommercialization proponents that such

Table 2. Peak counts of steelhead redds in mainstem Skagit and Sauk Rivers during aerial surveys flown between April and June, from 1966 to 1985. Surveys were flown by Washington Department of Game from 1966-1983, and jointly by Washington Department of Game and Skagit System Cooperative in 1984 and 1985.

<u>Year</u>	<u>Skagit Redds</u>	<u>Sauk Redds</u>
1966	208	99
1967	166	166
1968	*	148
1969	---	---
1970	---	---
1971	77	---
1972	*	---
1973	236	---
1974	103	96
1975	178	120
1976	45	65
1977	234	185
1978	341	144
1979	160	55
1980	**	**
1981	427	**
1982	299	209
1983	490	550
1984	475	350
1985	663	402

* Incomplete count (part of river was not flown)

** Poor visibility.

an occurrence is inherently impossible. The key to this success is management. A properly managed fishery, whether it is a commercial or sports fishery, or both together, can produce the desired long-term results. Any unmanaged fishery, whether it be a commercial or a sports fishery, has the potential to destroy the resource, as is indicated by the Skagit experience during the years before Boldt Decision management standards were instituted.

In summary, the major points relating to conservation and deccommercialization on the Skagit are:

1. The hatchery steelhead run is not a conservation concern, even with tribal commercial fishing.

2. The tribal commercial fishery could not have been the cause of a decline in the wild steelhead run.

3. The sports fishery has been catching more wild steelhead than the tribal fishery.

4. Irregardless, the combined sports and tribal catch rate of wild steelhead has been quite low.

5. Even with co-existing sports and commercial fisheries, the wild Skagit run sizes and spawning escapements have been increasing, and are now at least as healthy, and probably healthier, than they were before commercial fishing started.

6. Thus, it is not necessary to deccommercialize steelhead to solve a conservation problem, because, if there was once a conservation problem, it is already being solved without deccommercialization.

Economics

S.954 claims in Section 2 that "the value of steelhead trout to the economy as a game fish is substantially greater than its value as a commercial fish". The basis for this is the assertion that the total of all indirect expenditures made by sports steelheaders, divided by the sports steelhead catch, is greater than the dockside price of a commercially-caught steelhead. This comparison, however, appears to be logically improper for four reasons: 1) the true value of a commercially-caught steelhead is greater than its dockside price; 2) sportsmen do not make expenditures on a per-fish basis; 3) the comparison confuses the production of wealth with the distribution of wealth; and 4) the conclusion of this comparison raises ethical and economic questions about rewarding inefficiency and expropriating property on the basis of who has the most money.

Regarding the commercial value of steelhead, much was said in 1981 about the spin-off value to the whole economy of commercial steelhead, and about the value of the commercial steelhead fishery to the tribes -- both culturally and economically. The dockside price is, of course, not the total input of a steelhead to the economy -- there are processors, distributors, wholesalers, retailers, restaurant and tourist trade, gear purchases, and gear maintenance. In fact, there are, in the Skagit Valley, supporters of decommercialization who don't seem to realize that they make a large part of their income by repairing and selling Indian gear that is used for steelhead fishing. Beyond this value to the outside economy is the value to the tribes. Fishing is the major source of tribal employment, and is the primary activity that binds together a tribe. The steelhead fishery (which was aboriginally also a commercial fishery) is the focal point of the

Winter phase (November to May) of the Annual Round -- the cycle of living, livelihood, and travel that were the traditional Skagit Indian existence. In some years, as it was in 1984 for the Upper Skagit Tribe and the Sauk-Suiattle Tribe, the steelhead fishery is the major fishery, and thus it can be said that it's the commercial steelhead fishery that is providing the tribal identity. It would be very difficult to put a dollar value on this, since, for many people, their tribal identity is their reason for living. Moreover, over 60% of the tribal fishing households live below the poverty level -- for them, any money from a commercial steelhead fishery can mean the difference between paying your bills and going on welfare, a cost that is significant in both human and economic terms.

The second flaw in Section 2's economic comparison is that sportsmen do not pay on a per-fish basis. A sportsman spends money for a recreational experience, of which catching a fish is only a small part. Many of these costs are fixed, regardless how many fish a sportsman catches, and it would not follow that increasing the catch would increase the expenditures. There are no studies I know of that show that, for example, a 20% increase or decrease in catch will result in a corresponding 20% increase or decrease in sportsmen's expenditures. This is important because it would mean that even if the entire tribal steelhead catch were re-allocated to sportsmen, there is no guarantee that there would be any corresponding increase in expenditures to benefit the economy.

The third flaw in the Section 2 comparison is in confusing a production function with a distribution function. A commercial steelhead fisherman is earning money, producing wealth that adds to

the total supply -- a sportsman is spending money redistributing already-earned income, which does not add to the total supply. In terms of the total economy, a sportsman's expenditures may benefit a segment of the economy, for example, lure makers, but this is discretionary spending that could otherwise have been used to buy golf clubs -- there would be no net increase to the economy as a whole. Since the commercial catch is actually adding wealth to the economy, and not merely distributing it, it is inaccurate to say that the value of steelhead to the economy is greater as a game fish.

The fourth flaw in the comparison is that establishing the principle that "he, who can pay the most for property, can take it away from whoever owns it" somehow seems less than ethical. If someone owns property from which he is deriving income, and he's paying the bank a mortgage at 10% interest, and someone else tells the bank that he'd like that property and would pay the mortgage at 15% interest, then does the bank have the right to evict the original property owner? If not, then there is no justification for the argument that a tribal property right can be extinguished on the basis that someone else will pay more for it.

Moreover, the Section 2 comparison would establish an unhealthy precedent for rewarding inefficiency. If it costs a sportsman \$100 for a steelhead, and it costs a commercial buyer \$20, then the most economically efficient way to harvest steelhead would be for all of them to be caught commercially. In the state of Washington, we have a power-producing entity called WPPSS, which is spending more money to produce each kilowatt of energy than any other power producer in the state. If we were to use the decommercialization logic, then all power

production in the state should be done like WPPSS, because that spends the most money per kilowatt.

In summary, the economic justification for decommercialization is inaccurate in the means by which it assesses whether there would be any net economic gain from decommercialization, and it is illogical in assuming that the basis for an economic evaluation is a comparison of expenditures. Thus, the economic argument for decommercialization has not shown that there will be any net economic benefits to counter the economic costs, and therefore, the economic argument for decommercialization is not valid.

Management Efficiency

S.954 also claims in Section 2 that commercial steelhead fishing has had an "adverse effect" on effective management of steelhead. This claim was covered to some extent in this report's "Conservation" section, where it was found that since the advent of commercial fishing, management on the Skagit is now a quantum leap more effective than it was before the Boldt Decision. Prior to the Boldt Decision, management was pretty much a laissez-faire operation, with no attention to pre-season, in-season, or post-season run sizes, spawning escapement estimates, juvenile production capacities, hatchery return rates, or even to more precise catch estimates. All these management advances resulted directly because there was a commercial fishery. Thus, there is no validity on the Skagit to the claim that management effectiveness has suffered due to commercial steelhead fishing.

In fact, there is evidence that management effectiveness would

suffer if commercial fishing were banned. This is because, on the Skagit, in-season estimates of run size and run timing are taken from the commercial fishery, and the commercial fishery also contributes much of the age composition data. Thus, without the commercial fishery, management would be much less precise than it currently is. This improvement in management efficiency should be remembered when considering the impact of the Boldt Decision on sports fishing. Section 2(a)(4) claims that the court decisions had "significant and adverse effects on sports fishing." This claim, however, is also flawed because it is based on comparing present-day catches with catches in some bygone year, rather than the more relevant comparison of present-day catches with what present-day catches would have been without the court decisions. The trend shown in Figure 2 is fairly clear: sports catches were declining sharply well before the Boldt Decision, and there was no impetus to institute management measures to reverse that decline. Thus, it is highly probable that, without the Boldt Decision, sports catches on the Skagit would have continued their one-way slide to oblivion, and the catches now would actually be worse than they are, plus there would be no prospects for any long-term improvement. Therefore, it can legitimately be claimed that, far from having an "adverse effect" on sports fishing, the Boldt Decision actually had a very positive effect on sports fishing for steelhead on the Skagit.

Summary

In analyzing the arguments for decommercialization, the conclusion

is that decommercialization would be neither beneficial nor necessary, and would, in fact, likely be a detriment, in the three areas cited by its supporters as reasons to justify it: conservation, economics, and management efficiency. Thus, the decommercialization legislation would most likely not accomplish its stated beneficial purposes.

III. ANALYSIS OF ARGUMENTS AGAINST DECOMMERCIALIZATION

Opponents of decommercialization oppose S.954 on the grounds that it: 1) will abrogate treaties; 2) will have a shattering economic and cultural impact on the tribes; and 3) is racist.

Treaty Abrogation

Section 4(a) of S.954 states: "Notwithstanding any Indian treaty...[state laws on fishing will override the treaty right]". Section 4(c) adds that "the rights of Indian tribes and members of such tribes to take, possess, transport, or sell steelhead...are terminated or modified." This appears to be a clearly explicit expression of abrogation of the treaty right, since it says that henceforth, the treaties will be ignored. Nonetheless, proponents of decommercialization have claimed that this bill will not abrogate Indian treaties. What is the basis for this claim, and does S.954 actually abrogate treaties?

The "No-Effect" Claim.

One sponsor of S.954 said that this bill would "in no way affect

the tribes' treaty rights to fish" -- they just wouldn't be able to sell what they catch^{5/}. This position, however, seems to be an extreme case of splitting hairs, and it ignores the fact that commercial trading of fish was well-established long before treaty times, and that therefore it was clear to the signers of the treaties that commercial fishing would be recognized as being included in the treaty fishing right. Since commercial fishing is included in the treaty right, and since rights are not divisible into partial rights, it would be difficult to imagine how it is possible to take away part of the fishing right without abrogating the entire right. This is somewhat like telling someone he has the right to drive his car across the country -- he just can't put gasoline in it. Or, more relevantly, like telling a farmer, who had just paid a bundle for a farm on which he's planning to make his livelihood, that he can grow as much as he wants -- he just would be forbidden to sell it (and he wouldn't receive subsidies for not growing it). The farmer would probably feel, with considerable justification, that his property right had been abrogated, and certainly had not been "in no way affected".

The reverse situation would be to forbid any fisherman from keeping his catch, and to require that every fish must be sold. This could be justified on the grounds that getting a fish ticket for every fish caught provides a better count of the catch, hence, more effective management; however, a sportsman who wanted to keep his trophy fish would probably feel that his fishing right had been "in some way affected". Obviously, if it would be an infringement on fishing rights to require all steelhead to be sold, then it would equally be an infringement to require that none can be sold.

S.954 does not, however, only forbid commercial sale of steelhead. It also, in Section 4(a), requires that tribes can fish only with state-permitted gear at state-permitted times and locations. This would obviously not "in no way affect the tribes' treaty rights to fish". In Washington state, this would mean that Indians could use only hook and line gear, and not gillnets, to catch steelhead, even during ceremonial fisheries.

Supporters of decommercialization justify this restriction on the grounds that use of two sets of regulations adversely affects the state's ability to manage effectively, and on the grounds that allowing Indians to use gillnets while non-Indians can only use hook and line is a denial of equal rights.

The subject of management effectiveness has been covered above in the section on "Management Efficiency", in which it was shown that current management, with both a commercial and sports fishery and separate regulations for each, is a quantum leap more effective than it was when there was only a sports fishery. Moreover, the state does not have the problem or responsibility of managing both the commercial and sports fisheries -- the tribes manage the commercial fishery and the state manages the sports fishery, and this system of joint management has been very successful on the Skagit. Thus, there is no basis for claiming that "improved management effectiveness" justifies forcing Indians to fish according to state hook and line regulations (or, for that matter, for forcing sportsmen to fish according to tribal gillnet regulations, which is an alternative that has equal validity in terms of "management effectiveness").

As for the "equal rights" argument that it's unfair for Indians to

use gillnets when non-Indians can't, one point that must be remembered is that there is no federal law that prohibits non-Indians from using gillnets to catch steelhead. It is the non-Indians' own choice, as represented by their state government, to use hook and line gear only. Non-Indians are entirely free to legalize use of gillnets, if they choose to do so. They have thus far freely chosen not to. Thus, there is no double standard in the Indians choosing to use gillnets while the non-Indians choose not to, because both parties have a free choice.

What is ominous is the direction to which the "equal rights" argument leads. The fishing right is a property right, and claiming that its possession makes Indians super-citizens is no more valid than claiming that a stockholder of a corporation is a super-citizen because he receives dividends that non-stockholders don't receive. What the so-called "equal rights" argument says is that Indians cannot own property unless all other citizens also own that same property. If it were not meant to discriminate against Indians, then the general application of the "equal rights" thinking would be that all citizens must own the same property equally. This would be the law only in a purely communistic society, and I don't believe that that is the kind of society that either opponents or supporters of S.954 want to establish. Since we don't live in a communistic society, then denying property rights only to Indians, as S.954 would do, would itself be highly discriminatory, and would clearly not be an "equal rights" measure.

The Compensation Claim.

Another sponsor of S.954 did not go so far as to say that it would "in no way affect" the treaty fishing right, but he did claim that it would not abrogate treaties because tribes could be compensated for having their rights taken away (Swift, congressional Record, pg H2227). While this line of reasoning ignores the question of whether it is abrogation of the property right to force someone to sell his property when he doesn't want to (and when the forced sale cannot be shown to be of overriding public interest), it is still worthwhile to examine the proposed compensation. Three forms of compensation are implied: 1) increased salmon catches; 2) license fees for sportsmen on reservation; and 3) Court of Claims.

In public statements on decommercialization^{6/}, proponents have implied that tribes could be compensated for losing their steelhead by being allowed to catch more salmon. However, even if the tribes were willing to make that trade, and many tribes would not, there is nothing in S.954 that provides for letting Indians catch more salmon. In fact, one of the sponsors specified that S.954 "does not touch on" salmon harvests (Gorton, Congressional Record, pg S4401); thus, S.954 was specifically drafted so as to ignore salmon tradeoff considerations. In recent years, tribes have had to struggle bitterly just to get the salmon share to which they are entitled, and it would be unrealistic to expect that they could get more without specific legislation. Moreover, the coho and chinook cutbacks by non-Indians that would be required to make up for the steelhead lost by some tribes would be so severe as to make a salmon tradeoff politically

impossible. Thus, it is highly unlikely that there is either the capability or the intent to compensate tribes for lost steelhead with increased salmon catches.

As for compensation by license fees from sportsmen, this is meaningless for the Skagit tribes. The Sauk-Suiattle and Upper Skagit reservations each cover only a small area, and neither borders any river. Obviously, no sportsman will pay a license fee to fish there. The Swinomish Reservation is larger, but it also does not border or contain any rivers, and no sportsman would pay to fish for steelhead there either. Moreover, the tribes already have the right to license sportsmen to fish on reservation, even without S.954; the Swinomish Tribal Community, for example, sells several dozen licenses each year to non-Indians who want to fish for crabs in on-reservation marine waters. Thus, the Skagit tribes would realize absolutely nothing in compensation through S.954's provision to license sportsmen.

This leaves only the Court of Claims as the last resort for compensation. In considering the Court of Claims, there are some factors to keep in mind: the court is located in Washington, D.C., far from the localities most affected by this bill; it can only award money damages and can't return stolen property; appeals are difficult to make; and this court has much less experience with treaty fishing rights litigation than does the District Court. Also, remembering that treaty fishing rights, to an Indian, are rights comparable to the rights of freedom of religion and free speech, and that thousands of Americans have paid for these rights with their lives, a relevant question is: how comfortable would you be letting the Court of Claims decide what is the monetary value of your freedom of religion and free

speech, and would you be willing to sell them for that price? Most people would probably expect the compensation to be inadequate, and Indians have similar expectations regarding Court of Claims compensation for their treaty fishing rights.

Summary.

Despite claims by supporters that S.954 would "in no way affect" the treaty fishing right, and would not abrogate treaties, it is clear that S.954 would in fact eliminate the treaty commercial fishing right for steelhead; it would subordinate ceremonial and subsistence fishing to state-preferred gears and locations; it would force Indians to sell that right whether they want to or not, and without overriding public benefit; and it would then deny them meaningful compensation for the forced sale of their treaty rights. Each of these actions by itself would constitute treaty abrogation.

More simply, each treaty fishing tribe has treaty rights to fish commercially for steelhead, as well as for ceremonial and subsistence use, in their usual and accustomed manner. Since S.954 would specifically and explicitly abolish (abrogate) that right, there is absolutely no way to deny that it is clearly treaty abrogation.

Economic and Cultural Effects

Opponents of steelhead deccommercialization have cited as a reason for opposing it the devastating economic and cultural effects that deccommercialization would have on tribal societies. These effects have

been covered to some extent in an above section on "Economics". To repeat the main points, fishing is practically the only source of employment on the reservations of the Skagit Tribes, and steelhead are the only fish available during the long winter months. Eliminating the commercial steelhead fishery would, for many families, eliminate income during the winter, which would make life extremely difficult. Steelhead is sometimes, as it was in 1984, the largest commercial fishery, and its elimination would make a bad year much, much worse. In addition, most fishing households are below the poverty level, and steelhead fishing money can make the difference between paying your bills and having your electricity cut off. Finally, commercial steelhead fishing has spin-off economic benefits on the local community through gear purchases, gear maintenance, and household purchases, which would not be possible without a commercial steelhead fishery.

Culturally, steelhead are uniquely revered because they return to spawn again and again, and as such are associated with everlasting life and everlasting food. They are also the focal point of tribal life and tradition during the Winter phase of the Annual Round. Those who pooch-pooch the significance of the cultural value of a fish do not fully appreciate the extent of the importance of fishing in tribal societies. More so than in most other cultures, fishing is at the core of Skagit tribal society, and is essentially its only reason for existing. Taking away the fishing right would strike deeply into the spiritual core of the tribe and have a devastating emotional effect on its members, particularly the elders, in much the same way that a state-imposed shackling of religious belief would devastate the

devoutly religious.

The conclusion is that for the three tribes on the Skagit System, steelhead decommercialization would indeed have very significant adverse impacts, both economically and spiritually, on tribal life; and these adverse impacts would extend to the surrounding communities. Because salmon runs come at a different time of the year from steelhead, do not occupy the same spiritual role in tribal life, and are themselves usually too low in number to provide sufficient income to lift fishermen's incomes above the poverty level, it is clear that these adverse impacts could not be mitigated by the supposedly "far more abundant" salmon.

Racism

A third reason cited for opposing steelhead decommercialization is the claim by opponents that the legislation is either itself racially discriminatory and racially inspired, or else that it provides an outlet for perpetuating racial animosities. Proponents, for their part, have taken pains to deny that race is a factor, and rather have attempted to portray the issue as a conflict between sports fishermen on one hand, and commercial fishermen, all of whom happen to be Indians, on the other. Is race an issue?

During the 1981 Seattle hearings on S.97-874, it was clear that racial tensions were an ingredient, as observers yelled at Indians such epithets as "squaw", "redskin", and "you with the feathers, sit down!" Similarly, during the recent Initiative 456 campaign in Washington state, which provided the impetus for introducing S.954,

there were some expressions of racist motivation by supporters, despite strong efforts by sponsors not to make race an issue. For example, during a radio debate conducted by station KBRC in Mt. Vernon, Washington, two supporters in the audience said that Indian fishing rights should be taken away because Indians can't be trusted and won't fish legally. Following the debate, another supporter told a tribal biologist who is also a non-Indian (me), that he (the Initiative 456 supporter) "sure wouldn't go to work for any minority group", with special distaste and emphasis on the word "minority". While these are only isolated incidents, and certainly do not mean that the leading proponents of decommercialization share these same sentiments, it does indicate that some supporters are motivated by racism and are using the issue to justify and perpetuate racism.

This does not necessarily mean that the legislation is itself racially discriminatory. Even though the legislation does single out Indians, it does so on the basis that they fish commercially, not on the basis of race, and thus would appear to be not racially discriminatory. However, there are non-Indian commercial steelhead fishermen, and the legislation would not touch them at all, and for this reason the legislation itself must be considered racially discriminatory. The non-Indian commercial steelhead fishermen are the professional guides, who charge \$100 to \$200 per trip essentially to sell steelhead to sportsmen, and they are every bit as much involved in commercially selling steelhead as are the Indian commercial fishermen. Since this legislation would be applied only to Indian commercial fishermen, and not to non-Indian commercial fishermen, the inescapable conclusion is that it is being applied selectively on the

basis of race, and must therefore itself be racially discriminatory.

Moreover, there is implicit within the bill a form of subtle racism. This is the idea that it's all right to take away an Indian's winter employment, as long as he gets some kind of government handout -- either welfare or a Claims court award. In other words, the view is that Indians would rather sit around, accepting handouts, and doing nothing, than engaging in meaningful, productive work. Of course, most non-Indians would consider that demeaning to their self-esteem, and would be offended at such an offer. If non-Indians would consider that demeaning to their self-esteem, then why wouldn't Indians? The implication in the bill is that Indians don't have as much self-esteem as non-Indians, and that is, in itself, racist.

In summing up the question of racism, it would be instructive to repeat the words of the U.S. Commission on Civil Rights from their 1981 report on Indian Tribes: "the fishing rights issue, which is a property right, has racial dimensions" (Indian Tribes: A Continuing Quest for Survival, pg.69). In the case of S.954, it does appear that despite the efforts of supporters not to make race an issue, the bill does indeed perpetuate racial animosities and is itself racially discriminatory.

Summary

In analyzing the arguments against decommercialization, it appears that S.954 would clearly abrogate treaties; it would have a very significant and unmitigated negative impact on tribal economic and spiritual life; and it both fuels racism and is itself racially discriminatory.

IV. CONCLUSION

Under close analysis of the steelhead decommercialization legislation, S.954, as it relates to the Skagit River System, it seems that there is very little justification for the bill. Decommmercialization would not produce the benefits cited by its supporters: it would provide no conservation benefits that are not already being provided by current management of co-existing sports and commercial fisheries; there is no evidence that it would provide any net benefits to the economy as a whole, and there is evidence that it would actually take away from the economy, both by reducing production and by establishing precedents that reward inefficiency and allow property to be confiscated by any group with more money; and there would be no benefit to management effectiveness, which has improved greatly as a result of commercial fishing -- in fact, with decommercialization, management would become less effective.

S.954 would also have additional detrimental effects; it would clearly abrogate treaties, and do it in a way that provides little likelihood of meaningful compensation; it would have a shattering economic and spiritual impact on the Skagit Indian Tribes; and it would institute a law that fuels racial animosities and is itself inherently racially discriminatory.

Given these impacts, none of which are positive, it appears that there is no legitimate reason to support the steelhead decommercialization legislation, S.954. Thus, it is recommended that the U.S. Senate strongly oppose this bill.

FOOTNOTES

1. Joint Testimony of the Swinomish Tribal Community; the Upper Skagit Indian Tribe; and the Sauk-Suiattle Indian Tribe, pp. 192-196 in Steelhead Trout Protection Act -- Part II, Hearings on S.97-874, Sept. 28, 1981.
2. An excellent example of this is Quileute Tribal Council Resolution #81-A-66, on page 490 of the Sept. 28, 1981 Hearings on S.97-874-Part II, which took the decommercialization arguments verbatim and reversed them, creating a "derecreationalization" bill. Many proponents of decommercialization, who were unable to perceive that this was nothing more than their own decommercialization arguments given right back to them, were outraged. This same outrage was precisely the reaction the tribes felt to the decommercialization bill.
3. Comments of Senator Symms, Congressional Record, pg S4402, April 18, 1985; and Comments of Representative Swift, Congressional Record, pg H2227, April 18, 1985.
4. This does not mean hatchery runs have no problems. In Puget Sound, the primary broodstock (Chambers Creek) has experienced a sharp decline in return rate (marine survival) from 5-7% in the early 1970s to 1-2% in the 1980s. This has, in some cases, caused a decrease in hatchery run sizes. It is unknown whether this decrease is caused by natural cyclical variation, or by biological factors such as increased hatchery salmon competition and predation, marine mammals, or genetic inbreeding, but, since this increased mortality occurs prior to any fishery, it is clear that the cause cannot be either commercial or sports steelhead fishing.
5. Comments of Sen. Gorton, Congressional Record, pg S.4401, April 18, 1985.
6. Questions of Sen. Gorton, pp. 22-23 in Steelhead Trout Protection Act -- Part II, Hearings on S.97-874.

THE TOWNSEND GROUP

Specializing in the Biotic Environment



Director
DAVID TOWNSEND HOOPES, Ph.D.

June 17, 1985

Hon. Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington, D.C. 20511

Dear Senator Andrews:

Subject: Senate Bill 954; A Bill To Abrogate Indian
Treaty Rights

There are two ways to manage fishery resources; (1) regulate the fishermen or (2) raise more fish. It has been my experience over almost 25 years as a fishery biologist, first for the National Marine Fisheries Service in Alaska (13 years) and then as a private consultant (10 years), that the second is more preferable, both biologically and sociologically.

S. 954, a bill to abrogate Indian treaty rights to harvest steelhead for sale, constitutes a prime example of the first method of fishery management described above. S. 954 is preferential legislation at its best (worst). Breaking a treaty to serve a special interest group just at a time when joint agency and Tribal management of Pacific Northwest salmon and steelhead stocks is beginning to show positive results constitutes nothing short of sheer stupidity.

I urge you and your colleagues in the name of sound fishery management and in keeping with our treaty obligations to the several Tribes to reject S. 954.

I respectfully request that you please see these comments are included as part of the S. 954 Hearing Record. Thank you.

Very truly yours,

David T. Hoopes
David T. Hoopes, Ph.D.

DTH:dh

cc Senator Slade Gorton
Senator Daniel J. Evans



NORTHWEST HEADQUARTERS

P.O. BOX 2137, OLYMPIA, WA 98507

JUN 24 1985

Senator Mark Andrews, Chairman
 United States Senate
 Select Committee on Indian Affairs
 Washington D.C. 20510

Subject: S.954, a bill to provide additional protection for steelhead trout.

At its "Annual Spring Presidents Meeting" which was held in Yakima, Washington May 31, June 1 and June 2, The Northwest Steelhead and Salmon Council of Trout Unlimited took the following action concerning S.954.

On the second anniversary of its decision to enter into an atmosphere of cooperation and negotiations with the Treaty Tribes on fisheries issues, The Northwest Steelhead and Salmon Council of Trout Unlimited reaffirmed its position of cooperation when the delegates voted 59 "yes" - 6 "nay" to continue to seek decriminalization of steelhead trout through negotiations not litigation or legislation.

Sincerely,

Jerry Puleitch
 Jerry Puleitch, Executive Director Northwest
 Steelhead & Salmon Council, Northwest Regional
 Representative Trout Unlimited.

JP/ve



WASHINGTON ASSOCIATION OF CHURCHES

STATEMENT OPPOSING SENATE BILL 954

We the undersigned Washington state religious leaders are strongly opposed to the enactment of S. 954, which would abrogate Indian treaty rights to harvest steelhead for sale. We oppose the legislation because it is dishonorable, unnecessary and ultimately bad for the fisheries resource and for Indian tribes.

Unilateral proposals to take away tribal steelhead rights are dishonorable because they set aside our word of honor given in the treaties. We cannot afford morally to become a nation that breaks its treaties at will. We will benefit as a people if we stand by these promises.

Treaties between Indian tribes and the United States are legally binding contracts which guarantee the property rights of both parties. In the treaties, the tribes ceded millions of acres of land to the United States in exchange for a guarantee that Indian fishing rights would be protected and respected. In the treaty negotiations, the tribes bargained hard for, and obtained, guarantees of protection for their fishing rights. Proposals to upset this bargain and take away tribal property rights are in effect proposals which would undermine the basis for the title to all of the land in Washington State. Non-Indian citizens have benefited enormously from the treaties. Indians should be allowed the peaceful enjoyment of the rights they retained in the treaties.

Over the past decade, many church leaders in the Pacific Northwest have stood up for the protection of Indian treaty rights to harvest steelhead and salmon. We have watched as Indian tribes and state fisheries agencies have worked out agreements for cooperation and co-management of the fisheries resource. We have witnessed the formation of an amazingly broad coalition -- including sports fishing groups, timber land owners, environmental groups, labor unions, churches and others. This coalition is committed to working out natural resource use and allocation issues in ways which protect renewable resources and promote the interests of all parties. We see S. 954 as a step away from these cooperative efforts.

The information in our hands suggests that the steelhead resource has not suffered under cooperative management and tribal commercial harvests. A May 28th, 1985 joint press release of the Northwest Indian Fisheries Commission and the Washington State Department of Game announced that their biologists "... think the total catch may be the largest since 1979-80, or possibly even the best since the great season of 1971-72." We are also told that Columbia River steelhead runs this year were at record levels. In the face of these

Statement Opposing Senate Bill 985
Page Two

successes, we believe it is peculiarly inappropriate to take unilateral steps to abrogate Indian treaty rights.

Fishing for steelhead is central to the cultural and economic survival of Indian tribes. The crucial role which fishing plays within Indian communities is one reason why Indian tribes have strong commitments to effective fisheries management and conservation.

Over the past decade, we have been working it out in Washington State. It has taken a lot of work to get the level of understanding and cooperation to the level it is today. Proposals such as S.954 undercut this cooperation. We have seen this type of proposal before, but we suggest that this be the last time that it be put into the form of proposed legislation.

Signed by:

The Rev. David Alger, Executive Director, Associated Ministries of Tacoma-
Pierce County

The Rev. Loren E. Arnett, Executive Minister, Washington Association of
Churches

The Rev. Robert Bradford, Executive Minister, American Baptist Churches of
the Northwest

The Rev. Robert Clarke Brock, Regional Minister, Christian Church-Disciples
of Christ

The Rev. William B. Cate, President-Director, Church Council of Greater
Seattle

The Rev. W. James Halfaker, Conference Minister, Washington-North Idaho
Conference United Church
of Christ

The Most Rev. Raymond C. Hunthausen, Archbishop, Roman Catholic Archdiocese
of Seattle

The Rev. D. Harvey McIntyre, Executive Director, Washington State Catholic
Conference

The Rev. Robert Mills, Synod Executive, Presbyterian Church USA-Synod Alaska
Northwest

The Most Rev. William Skylstad, Bishop, Roman Catholic Diocese of Yakima

The Rev. Melvin G. Talbert, Bishop, Pacific Northwest Conference United
Methodist Church

The Rev. Thomas L. Blevins, Bishop, Pacific Northwest Synod, Lutheran Church
in America

June 13, 1985



Northwest Indian
Fisheries Commission

DEPARTMENT
OF GAME



news release

FOR IMMEDIATE RELEASE: May 28, 1985

CONTACT: Steve Robinson, Information Services Manager, Northwest
Indian Fisheries Commission, (206) 352-8030
Terry Rudnick, Conservation Education Program Specialist,
Washington Department of Game, (206) 751-5700

WINTER STEELHEAD WAS ONE OF THE BEST

OLYMPIA: As many western Washington steelheaders already know, the 1984-85 winter steelhead season was a dandy. Just how good it was won't be absolutely clear for several weeks, but Department of Game biologists and those of Washington treaty Tribes think the total catch may be the largest since 1979-80, or possibly even the best since the great season of 1971-72.

Anglers on such river systems as the Puyallup, Green, Snohomish and Cowlitz enjoyed an especially good winter, according to Bob Gibbons, the Department of Game's steelhead program manager. Comments on those rivers included descriptions such as "Just like the old days." Department of Game creel checks on some of those stream systems seem to bear out that comparison.

On the Green River, for example, creel check information shows that anglers caught about 7,000 steelhead this season. That's nearly three times the catch average of the last three seasons, says Gibbons.

The improvement was even greater on the Skagit system, where creel checks turned up over 6,000 sport-caught steelhead during the 1984-85 season. During the three seasons prior, the average sport catch on the Skagit was about 1,700 fish.

Creel checks turned up about 13,000 steelhead for anglers on the Snohomish system this season, compared to a three-year average of 6,790, while on the Quillayute system this year's sport catch was over 5,200, about 500 fish above the three-season average.

-more-

Like sport fishermen, tribal commercial fishermen also had a good winter. The tribal steelhead catch in Puget Sound and on the coast may well be the largest since the Boldt decision over 10 years ago.

While sport and tribal fishermen were busy catching steelhead, Department of Game and tribal fish biologists were cooperating with each other as never before. Agreements on harvest and escapement of the valuable steelhead resource were reached with all Tribes before the winter seasons started, and there wasn't a single court hearing or Fishery Advisory Board meeting to settle disputes during the course of the season. In the past, mid-season conflicts often resulted in sudden openings and closing of both tribal and sport seasons.

There are several good reasons for this year's strong steelhead runs and subsequent good fishing. High ocean survival, combined with the generally good quality of hatchery steelhead smolts are at least partly responsible. Added protection provided for wild steelhead in the late seventies and early eighties was also a factor. The protection of wild spawners by early stream closures and other restrictions, the targeting of tribal fisheries primarily on hatchery runs and other cooperative management activities have no doubt helped to boost the wild steelhead runs on several river systems.

"There is no question that everyone benefits when we get a great return of steelhead like the run we had this winter," said Archie Mills, chairman of the Washington Game Commission. "People should realize that these things don't just happen. It takes a lot of work on the part of many people to have good fish runs these days, and it also takes a great deal of cooperation. I think this steelhead season was a good example of what that kind of work and cooperation can provide."

"We are all seeing the benefits of cooperative management," said Bill Frank Jr., chairman of the Northwest Indian Fisheries Commission. "Continued cooperative management efforts and joint efforts to enhance the fishery and protect habitat will ultimately result in many good fishing seasons. The Tribes want this to happen for all fishermen."



June 13, 1985

The Honorable Mark Andrews
Senate Select Committee on
Indian Affairs
United States Senate
Washington, DC 20510

Dear Senator Andrews:

As Executive Director of the Washington Forest Protection Association, which represents private forestry interests in the State of Washington, and Chairman of the Northwest Water Resources Committee, an organization of business, industry, and agriculture that works to build cooperative relationships and resolve natural resources disputes with the Indian treaty tribes, I would like to comment strongly against passage of Senate Bill 954.

Both organizations publicly opposed the initiative to petition Congress to decommercialize steelhead when it was on the ballot in November. We felt then, as we do now, that such a law could severely hinder cooperative efforts currently going on within the state, and it would not benefit the resource.

The State of Washington has experienced ten years of civil strife over U.S. v. Washington, commonly referred to as the Boldt decision. Many lives and livelihoods were affected. Business, agricultural, and industrial operations were affected. Litigation was common fare, and as a result, our ability to manage resources suffered, as did the resources themselves. The sports, commercial, and Indian fisheries have been caught in a similar situation, except the conflicts between them have led many to ask: "Will we still be here fighting over the last fish?"

In the last three to four years, through the concerted efforts of groups such as ours, discussion is being held between the Washington Department of Fisheries and the tribes. And with the support of some sports fishing groups such as Trout Unlimited, a large measure of cooperation has been achieved in the state, far more than ever before.

The Honorable Mark Andrews
Page two

It hasn't been, and is not, an easy process. The resource managers in the state, public and private, Indian and non-Indian alike, are just beginning to learn to work together to solve problems. The problems themselves are Byzantine in their technical and socio-political complexity and are extremely costly to fix; and, quite frankly, given economic conditions in the state, there are no deep pockets out here.

As organizations representing private resource managers, both the Washington Forest Protection Association and The Northwest Water Resources Committee feel that the cooperative efforts taking place in the state are beginning to produce tangible results. We are beginning to see a gradual but steady increase in our ability to settle disputes with the tribes. There have been no law suits filed in several years as one-time litigants learn that negotiated settlements can produce win-win solutions in some very sticky situations.

Of course, there are those who continue to oppose the Boldt decision, and we acknowledge their sentiments. However, we do not feel that their views represent sound public policy. The stakes are too high. Our resource managers become adversaries and warriors, losing sight of the potential for resource enhancement. Our resource decisions get tied up in court for years. Crucial decisions get deferred. No one wins, fish or foe.

Senate Bill 554 threatens to stand in the way of the progress we're making. It threatens to be divisive and to promote suspicion and hostility where so much effort has gone into alleviating mistrust. It threatens to destroy both the process and fabric of cooperation, just when the spirit of cooperation is taking hold.

We urge you to consider this legislation carefully and decide, as we have, that it is not worthy of your support. We feel it will hurt much more than it helps.

Warm regards,

Stu Bledsoe

Stewart Bledsoe
Executive Director, Washington Forest Protection Association
Chairman, Northwest Water Resources Committee

jm

cc: Senator Dan Evans

JACK WAYLAND DEPT O GAME
600 NORTH CAPITOL WAY
OLYMPIA WA 98504 09AM

Western Union Mailgram



4-0232288190 07/09/85 IC8 IPMBNGZ C8P WHBB
2067535710 MGMB TDBN OLYMPIA WA 95 07 589 JUL 23 PM 12

MR PETE TAYLOR
SENATE OFFICE BLDG RM 640
WASHINGTON DC 20510

THIS IS A CARBON COPY OF TELEGRAM SENT TO SENATOR ANDREWS.

DEAR SENATOR ANDREWS:

THE WASHINGTON STATE GAME COMMISSION SENT A LETTER TO YOU ON JUNE 6, 1985 STRONGLY SUPPORTING THE DECOMMERCIALIZATION OF STEELHEAD THROUGH PASSAGE OF S-954. THE GAME COMMISSION REMAINS IN SUPPORT OF S-954 ALTHOUGH WE ARE UNABLE TO SEND A REPRESENTATIVE TO WASHINGTON, DC, FOR THE JULY 11TH HEARING WE WOULD APPRECIATE HAVING OUR POSITION READ INTO THE RECORD AT THE HEARING.

SINCERELY,
ARCHIE U MILLS, CHAIRMAN
WASHINGTON STATE GAME COMMISSION

13125 EST

MGHCOMP

WASHINGTON STATE

Sportsmen's Council

COORDINATED CONSERVATION—AFFILIATED WITH NATIONAL WILDLIFE FEDERATION

Washington State Sportsmen's Council
P.O. Box 357
Clear Lake, Washington 98234

Senator Mark Andrews, Chairman
United States Senate
Select Committee on Indian Affairs
Washington D.C. 20510

July 5, 1985

Dear Senator Andrews,

We the 30,000 members of the Washington State Sportsmen's Council would like to thank your committee for holding hearings on Senator Gorton's bill, SB 954 to decommercialize the steelhead trout. We respectfully request and urge your committee members to pass this important piece of legislation and send it to the floor of the Senate with their recommendation for passage.

The steelhead trout is a fragile, limited resource, impacted by habitat loss due to dams, forest practices, road building, pollution, urban sprawl, and natural disaster.

The Washington State Legislature in 1925, made the Steelhead Trout a game fish and it remains so for all non-tribal and non-Indian citizens. But the infamous Boldt decision of 1974 allows Washington tribal Indians (less than 1% of our population) to commercially harvest up to, and in most streams, in excess of 50% of the harvestable Steelhead stocks in Washington State. Federal Judge George Boldt's decision also has had an adverse economic impact upon our state. The National Marine Fishery in a survey reveals that, on the average, a sport caught steelhead is worth \$128 to the state's economy versus \$20.97 for the same fish commercially caught. The Boldt decision also usurped the State's right to manage this resource. Gillnetting is affecting the stocks in the rivers and streams of the Puget Sound and Olympic Peninsula, and, in addition, the Indian tribal fishery in the Columbia River affects both Washington and Oregon (Columbia River) and Idaho (Snake River) stocks.

The Steelhead Trout is like the Atlantic Salmon in that it does not die after spawning, but will return to the ocean to come back time and again to spawn in the streams. The Indian Net fishery takes a non-selective toll on both upstream and downstream fish, thus taking many fish, particularly in February, March and April, that have

spawned having no commercial value and little, if any, non-commercial value. In contrast, the non-commercial harvest can be controlled by catch and release programs or closed seasons, thus fish may be allowed to return to the ocean to feed and return as prime fish again the following year.

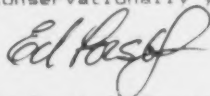
In Washington State most hatchery programs are funded by sportsmen's license fees and managed by the Department of Game. We have other hatcheries that come under U.S. Fish Wildlife Service jurisdiction, and are funded by U.S. citizens' tax dollars. Mitigated fund hatcheries, supported by those entities that have dammed many of our streams, and a few tribal hatcheries managed by the tribes, but supported by citizens' tax dollars, although many of their plant programs restrict the sportsmen from being able to harvest returning fish (in some cases the sport catch is less than 5%).

This bill, however, affects many states in addition to Washington that also have Steelhead fishery resources such as Idaho, Oregon, California, Alaska, Michigan, Minnesota, and New York, among others who are also impacted by commercial fishing.

In essence, the Steelhead Trout is to many sportsmen of the Pacific Northwest and Midwest, what the Bass is to many sportsfishermen in other parts of the United States.

Again we respectfully urge the speedy passage of SB 954 to return the Steelhead Trout to the status of game fish for all citizens (equality under the Constitution) and the sole management to the respective Department within the States as requested in the 1984 passage of Washington State's Initiative 456 (916,000 votes).

Conservationally yours,



Ed Forslof, President
Washington State Sportsmen's Council

Enc:

U.S. WASTAGE
 (none)



STATE OF WASHINGTON
 DEPARTMENT OF GAME

600 North Capitol Way, C-11 • Olympia, Washington 98504-0001 • (206) 753-5700

June 13, 1985

Ms. Carol Lewis
 S/SPAWN
 P.O. Box 3336
 Redmond, WA 98052

Dear Ms. Lewis:

Regarding your inquiry into tribal and non-tribal (sport) steelhead harvests on the Quinault River during recent seasons our records show the following:

	Tribal	Non-tribal
1981-82	12,032	60
1982-83	10,741	274
1983-84	15,542	33
1984-85	27,867	(unavailable)

I hope this adequately answers your questions.

Very truly yours,

Larry Lennox
 Information Programs Coordinator

LBL:drh

OFFICE OF THE ATTORNEY GENERAL

File Memorandum

November 15, 1984

One economic argument arises from the now quantifiable costs to the State and its citizens of converting a sports fish steelhead to commercial catch with far lesser value to the economy. The National Marine Fisheries Service did a study for the Northwest Power Council placing such values (steelhead) at:

SPORTS	\$128.00	
COMMERCIAL (including "Socio-cultural value)	20.97	
"NET" LOSS	\$107.03	(an appropriate expression)

Applying these values to "Boldt" area catch for 1983-4 Season, we get the following loss:

CATCH:	<u>INDIAN</u>	<u>NON-INDIAN</u>
	59,655	45,000

(Note disparity--no 50/50 here)

Value -- \$20/fish assuming NMFS figures. (This figure is high because NMFS numbers used the Columbia Steelhead which are several pounds larger than "Boldt" area fish.

\$1,193,000 (Indian Commercial Net Value)

Value if sport catch -- \$128/fish -- \$7,635,840 (Sport Value)
(59,655 x \$128)

"NET LOSS", "Boldt" Case area only -- \$6,442,840.00

A similar calculation applied to the Columbia River catch for this year:

CATCH:	<u>INDIAN</u>
	65,000 <u>plus</u> ¹ (\$20 NMFS figure <u>too</u> high this year)
	\$1,300,000 (Indian Commercial Net Value)

Value if sport catch -- \$128/fish -- \$8,320,000 (Sport Value)
(65,000 x \$128)

NET LOSS -- \$7,020,000

¹ Reports to present include only commercially sold.

WESTPORT CHARTERS, INC.MARK AND CATHY CEDERGREEN, OWNERS
LOCATED ACROSS FROM FLOAT 8

(206) 268-9120

P. O. BOX 546

1985 JUN 11 PM 2:33
WESTPORT, WA. 98595

JUNE 6, 1985

Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D. C. 20510

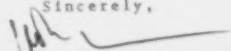
Dear Senator Andrews:

The purpose of my letter is to express my opposition to S.954, the steelhead bill. I am on the Board of Directors of the Washington State Charterboat Association and, for the past year, have been the Chairman of the United States-Canada Pacific Salmon Treaty Coalition. The view I shall express is also that of the majority of the Charterboat Association and virtually all of the Treaty Coalition.

Most non-Indian fishing groups in this state have finally resolved themselves to the reality of Indian Fishing Rights. Particularly, since the U. S. Supreme Court has affirmed thier validity. In recent years, it seems as if we have been fighting over the last fish. Negotiation of the Fishing Treaty with Canada has opened the door to a future which promises fish for all users. The Salmon Treaty became a reality because of cooperation between Indian and non-Indian fishermen. Cooperative efforts are under way right now to rebuild and improve the resource. This legislation, if passed, would only tend to reverse the progress of the past few years.

I urge you to work for the defeat of S.954. I also ask that you enter my letter in the Congressional Record.

Sincerely,


Mark Cedergreen

MAY - AUG. - TOLL FREE 1-800-562-0157

YAKIMA NATION MUSEUM
P.O. Box 151
Toppenish, WA 98948
(509) 865-2800

SENATOR MARK ANDREWS:

June 14, 1985

Let it be known that our Museum located on the Yakima Indian Reservation in Yakima County, Toppenish, Washington opposes S.954, a bill to abrogate Indian treaty rights to harvest steelhead for sale. Following are our reasons for opposing:

1. Dishonorable legislation by U.S. and State governments...going back on the white man's...is a cliché that should no longer be needed.
2. The treaty rights are already LEGALLY BINDING CONTRACTS which guarantee the property rights of BOTH parties. Why must the Indian always be forced to go to court to protect his rights or steadily lose treaty rights...rights which should last until the mountains are gone, the rivers dry, etc?
3. Fishing has always been a traditional, natural right of the Indians. They are committed to working out natural resource use and allocation issues in ways which protect renewable resources and promote the interests of all parties. Check with the Northwest Indian Fisheries Commission and the Washington State Department of Game to see how the fish runs are today!
4. All of the tribes' work to promote cooperation and understanding will be undercut by this bill. Steelhead treaty abrogation should never again be put into the form of proposed legislation.

Vivian Adams, Curator

Agnes Tulee, Collection Mgr.

Adrienne Walker, PR/Grants

Carol Metsker/Inez Strong, Business Office

James Peter/Steve George, Custodians



1985 JUN 13 PM 12:15

19115 - 14th Court, N.W.
Seattle, Washington 98177
June 7, 1985

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington, D.C. 20511

Dear Senator:

A treaty is a legal and, even more importantly, a moral obligation. This is especially true when the treaty entails the exchange of real assets, which cannot be returned if the treaty is abrogated.

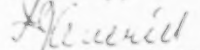
That is the case with bill S. 954, and I urge you and your Committee colleagues to oppose that bill, which would terminate the rights of Indian tribes to harvest steelhead salmon commercially.

Such termination would be nothing less than legalized theft, robbing the Indians both of their access to steelhead and of the lands which they originally ceded in favor of steelhead rights.

This is not the Soviet Union, which may violate treaty agreements with untroubled conscience. This is a land that lives by law, and which quite properly criticizes the Soviet Union for its cavalier and callous disregard of public commitments. If we are to maintain the moral advantage which permits our criticism of them, we cannot imitate their behavior by violating the basic treaty rights of our own people. To do so is to become no better than the Soviets are.

I urge you to vote against S. 954 as a matter of simple justice and of clear moral principle.

Sincerely,


Lloyd J. Averill

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

June 16, 1985

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Andrews,

Thank you for allowing me to respond to your invitation to submit testimony to this committee regarding S954, a bill to decommercialize Steelhead Trout by making it a game fish in the truest sense. Because of work constraints it will not be possible for me to travel in July to personally present testimony to your committee, however I do strongly support approval of this legislation and would ask you to read my testimony to the committee and include it as part of the hearing record.

To me and thousands of other sportfishermen and small recreational related business', decommercialization of Steelhead Trout is an "EQUAL RIGHTS" issue. The Treaty fishery for Steelhead is being conducted in such a way that the resource is being denied to a substantial number of users. The flow of benefits is going to the Treaty fishery and sportfishermen want their non-indian inferior rights elevated to equality with Indian fishermen. As a game fish, Indians could continue to fish for Steelhead trout with hook and line and to the same extent as such laws and regulations apply to non-indians and all other people.

Idaho sportfishermen are not receiving fair treatment in the distribution of the Steelhead Trout resource because the devastating Indian commercial fishery occurs ahead of the Idaho sport fishery. The result is greatly reduced run size before the fish arrive in Idaho Rivers for Idaho, Montana, Wyoming, and Utah sportfishermen to have reasonable opportunity. A special class of Indian commercial fisherman has been created that is superior in right to all other non-indian classes of fisherman. Idaho sportfishermen want Indians and non-indians to have equal protection and equal opportunity under the same Bill of Rights guaranteed by the United States Constitution.

June 16, 1985
 The Honorable Mark Andrews
 Page two

When the "Power Act" dollars were funded the Idaho sportfisherman was the "first one" they talked to you about when they needed funding. Today Idaho sportfishermen are the last users of the Steelhead resource (geographically) and the last decisions are made on my use to fish or not to fish. Idaho sportfishermen are bearing a disproportionate share of sacrificing more and paying more for resource production than they receive in the sportfishing opportunity afforded. And so are the fish as a species!

The Columbia River Inter-Tribal Fish Commission will come to you and talk about conservation, abundant fish, harvesting surplus, green grass, high mountains, forefathers, pristine flowing rivers, etc. They will convert you to their innocence in a hurry. It's a lot of CRAP! They are hiding behind this cleverly created group image to purposely mislead and to deceive you and me. We are really talking about Steelhead Trout that bring big commercial dollars to these tribes.

The highly organized-well funded Columbia River Inter-Tribal Fish Commission is an aggressive, implacable foe of Idaho, the Northwest, and all sportfishermen. The notion of cooperative attitude with rational Indian decisions does not exist. These Inter-Tribe fishermen are squeezing the resource tight. Tribal fish management pledges to cooperate are a hoax, they are in fact an embarrassing contradiction to sound resource management.

I submit to you that these Indian Tribes are asserting their Treaty Rights without regard to non-indians and the impact is irreversible. The Courts are in essence allowing these Tribes to regulate the resource to the detriment of non-tribal members. A violation of the "Public Trust Doctrine" is the result when all United States citizens are not entitled to equitably share in this public supported resource. Department of Interior (BIA) funding and subsequent pro-tribal policy is causing errors to be made in our Nation's treatment of non-indians and the fish itself.

The present system is stunningly irresponsible and impedes the ability of the Northwest States to deliver more of the fishing opportunities demanded by the majority of people. The Courts are ignoring the will and interests of the people in their refusal to take Treaty Rights to task. The key provision of decommercialization in this bill would eliminate the one factor (Indian Commercial gill-net fishing) that denies recreational opportunity to tens of thousands Northwest sportfishermen. We are asking you to break the stranglehold and dynasty of outdated Treaty Rights. Public tolerance is deteriorating. We want the fairness and simplification that S954 will give all American people.

June 16, 1985
 The Honorable Mark Andrews
 Page three

Sportfishermen will be outraged if your committee allows Steelhead Trout commercial fishing Indians to continue to operate behind treaties over one hundred years old as a means to continue to destroy Steelhead fisheries. When fishing treaties were made, people were riding on horseback and using spears and bows and arrows. Today's Steelhead populations cannot endure the all out war waged on them by sophisticated Inter-Tribe Indian fishermen with modern-day weapons used in fishing such as: nylon nets, boats with motors, two-way radios, fish finders, sonar devices, airplanes, trucks, electric winches, computers, hungry fish buyers paying top prices, sympathetic Federal Courts, Department of Interior (BIA) technical, legal and financial support, etc., etc.. It's time the Columbia River Indians joined the 20th Century.

A commercially caught Steelhead is a hunk of "dead meat". Pure and simple! There is no attachment of pride or personality to this piece of flesh. It's treated like a sausage. On-the-other-hand, to sportfishermen a Steelhead Trout is nature's beauty with an entirely different set of perceived values. We are talking about sharing unforgettable real life experiences over a beer, fishing memories, making wonderful friends, camaraderie, boasting, telling fish stories, lying, bragging and fellowship. Are these things worth pursuing all over a silly Steelhead Trout? To me and countless other sportfishermen the answer is a resounding "YES". To catch a Steelhead Trout and to thrill to the excitement is one of the greatest pleasures in life.

Tell me again about "traditional fishing grounds" at the base of fish ladders at our National Fish Hatcheries. Hiding behind the skirts of long outdated laws, these poachers (by non-Indian standards) are not recognized as criminals and they cannot be convicted and put out of business. There is no code of ethics for these fishing Indians and I can assure you that waste, fraud, and abuse are also occurring.

When the Columbia River Indians "Target Steelhead" every time their gill-nets go in the water it usually means over 3000 fish on the average per day will wind up on the fresh fish markets in a large number of metropolitan areas. A large percentage of those Steelhead Trout are Idaho fish that when lost cannot be replaced. This means that the Indian Commercial Fishery is biting heavily into an artificially elevated resource with the result being a loss that will be felt on upper river spawning and perpetuation of the specie.

I am concerned that if commercial Steelhead fishing is allowed to continue, we are going to blow a fuse somewhere. It seems foolish to allow commercial harvest of Wild and Native stocks of Steelhead Trout that are not replacing themselves through reproduction. Steelhead runs in the Upper Salmon River of Idaho are in serious trouble. We are talking about

June 16, 1985
 The Honorable Mark Andrews
 Page four

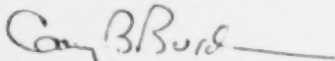
preservation of the last wild fish, the survivors of the genetic pool. History will not be very kind to us if we allow these Native Steelhead to slip through our fingers and go the route of the last passenger pigeon. Gill-nets are indiscriminate as to which fish they catch. On-the-other-hand, sportfishermen in Idaho's Salmon River release unharmed any wild fish caught so that it might continue to their spawning grounds to fulfill their right to continue to exist as a species.

Sportfishermen are selling "equal opportunity" in asking you to approve legislation that will decommercialize Steelhead Trout. Steelhead Trout as a game fish can be enjoyed by thousands of Americans including the three-hundred Columbia River American Indians. Sportfishermen are asking you to change the system for the better, for the future, for fairness and for hopes and dreams. It's the only answer to righting a wrong and re-establishing public confidence that fosters a climate that encourages all Americans.

I urge you as vehemently as I can to pursue passage of S954 with all the vigor and dedication that I have shown in writing this testimony. It's going to take guts to provide leadership that will modernize Treaty Rights and provide essential democracy that is overwhelmingly supportive of making Steelhead Trout a true game fish regulated by State control where the resource originates.

Thank you for hearing my cry of distress to persuade your Senate colleagues that the sportsfishermen's plea is well founded.

Yours for equality in Steelhead fishing rights,



Gary B. Busch

Post Script: My love for Steelhead fishing will not permit me to shorten my strong feelings for the injustices involved without attaching as an addendum the "Steelhead Papers" that I have written on this very subject you are considering. If you want to get a feeling for what is going on from an emotional streamside perspective, then I would urge you to read these pertinent letters.

GARY B. BELO

Bill Wilkerson, Director
 Washington Department of Fisheries
 115 General Administration Building
 Olympia, Washington 98504

September 25, 1984

Dear Mr. Wilkerson:

It is not very often in fish and game matters that I encounter something that bothers me enough to make me want to sit down to write a letter in an attempt to influence policy re-thinking. The exception that I feel very strongly about today concerns the "outrageous act" of excessive Indian predation on a select portion of the Wild Steelhead run in the Columbia-Snake-Clearwater-Salmon River system.

The frustration of seeing one user group (Indians) allowed to live above the laws established for all other user groups of this natural resource bugs the hell out of me. To see the Federated Indian Tribes abuse the simple premises of conservation and common sense should not be tolerated any longer. Why should they have rights that I don't have?

Logically, Indians in their gill-net commercial fishing should only be allowed to harvest to the extent of a certain percentage of the steelhead that they personally (as a user group) contribute to the river system in perpetuation of the continued enhancement, conservation, and utilization of the steelhead resource. Are there any tribal steelhead hatcheries? Do they contribute to the Salmon River Steelhead Run in any way?

It is not right (legally, biologically, morally, ethically) that Indians should feed on just the highest quality Wild Steelhead. The Indians are not taking the "leftovers"; as the first primary impact group on these wild fish they are in essence stealing something that does not belong to them exclusively. To selectively "gang up" on the premiere fish (wild) of a species of fish and harvest a disproportionate share is unconscionable and unforgivable.

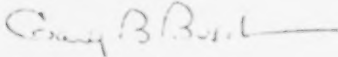
The Indian spirit of preservation, conservation, voluntary respect and cooperation with other upstream users' is obviously lacking or totally absent in their continued philosophy of fishing abuses. Why should they have special privileges as the first user (harvest

and keep) of this resource that I as the last user (sport fisherman - catch and release) at the end of the river system do not have?

It makes me furious that downstream agencies and organizations do not seem to be able to control iniquitable harvest on this select group of "wild" fish. Please do all that you can to "get the Indians off of the Wild Steelhead."

Thank you for giving serious consideration to my plea. Surely it must be time for Congress, the various State legislatures, and their agencies to be accountable to All American Fishermen.

Very truly yours,



Gary B. Busch

GHB/md

cc. Idaho Department of Fish and Game
Northwest Power Planning Council
Department of the Interior
Department of Agriculture
President Ronald Reagan
Senators McClure and Symms
Representatives Hansen and Craig
Governor John V. Evans

C. E. B. B. B.

P. O. Box 1000

December 11, 1984

Edward Sheets
Executive Director
Northwest Power Planning Council
700 S. W. Taylor Street, Suite 200
Portland, Oregon 97205

Dear Mr. Sheets,

Well gentlemen, we have proved in the last couple of years that we could significantly increase the population of Steelhead in our Northwest River Systems by bringing new hatcheries on line, by increasing artificial reproduction, by providing sufficient water courses and by efficiently managing dam by-pass facilities.

The Power Planning Council has done a splendid job of creating a balance between power production and fish survival. The Idaho Fish and Game Department has done a commendable job of controlling sport fishermen and supervising, managing and maintaining Steelhead hatchery facilities. The protection and enhancement of the natural river habitat is encouraging.

The Army Corps of Engineers has done a magnificent job of designing engineering and supervising the construction of badly needed new Anadromous facilities. Many sportsmen, clubs, and organizations have spent countless hours writing letters of support, gaining media and various agencies' support, and soliciting support where ever it might be found in a joint endeavor to provide solutions to preventing depletion of the Steelhead resource.

All of the above should certainly applaud themselves in their effort to greatly elevate the overall Steelhead enhancement program. It took a lot of dollars and effort to get Steelhead numbers on the incline once again.

Well, we almost had it. Then up comes the joker. "The Fishhog Indians". A few hundred greedy Indians in one year completely nullify the hard work and efforts of so many...

The Indian Tribes have raped a resource that belongs to all Americans. A resource created by your efforts and Idaho's efforts. A bunch of "fishhogs" whose only concern is the commercial cash value generated from as many fish as they can possibly slaughter.

December 11, 1984
Edward Sheets
Page two

When they saturated the American fish market with our steelhead, they sold our fish and their catch to the export markets of France and Japan. It really disturbs me to think that our tax dollars and electric rate increases are subsidizing France and Japan and padding a bunch of Indians' bank accounts.

Today the Indians' answer is to "produce more fish". Obviously, so they can make more money. The Sport Fisherman's answer is to make Steelhead a "gamefish" with full legal protection. The middle of the road is stiffer regulation on the division of this resource.

The real tragedy is the lack of wisdom and foresight in allowing Indians to access Steelhead in the first place. We let them decimate the Chinook Salmon run and now they are going to work on Steelhead.

The "residual effect" created for subsequent years will be a veritable nightmare. The highly successful Indians of 1984 will return to the well next year recalling an easy and highly lucrative prior experience. This will no doubt cause mushroom abuse by the new generation of profiteering Indians who continue to "pig out" year after year. You can bet they will be back with refined equipment and more effective methods, hungrier and greedier than ever...

Right now, today, is the best time to change the political structure between States and Tribes and to significantly alter U.S. Indian fishing policy.

Thank you for hearing my plea and doing all that you can to influence those with enough wisdom and power to reverse this Indian created inequitable distribution of "rights" on our great Steelhead resources.

Very truly yours,

Gary B. Busch

Gary B. Busch

BGG/mj

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

January 10, 1985

Bill Wilkerson, Director
Washington Department of Fisheries
115 General Administration Building
Olympia, Washington 98504

Jack Donaldson, Director
Oregon Department of Fish and Wildlife
Post Office Box 3501
Portland, Oregon 97208

STEELHEAD - COLUMBIA RIVER INDIANS AND THE SALMON RIVER

Are we producing and managing Salmon River Steelhead for the benefit of Columbia River Indians or the sportsmen and public who pay for them? If the dollars spent producing Salmon River hatchery steelhead and bringing new Salmon River Steelhead hatchery facilities on line is primarily for subsistence and commercial economic gain of Washington and Oregon Indians, then our Idaho tax dollars, electric rate fees and fishing license fee monies are being mis-spent and the Idaho public is being deceived.

When I see two million steelhead smolt being released at the new Sawtooth hatchery site and four million more smolt being released at the East Fork Salmon River and Pahsemeroi trap facilities and then see the Idaho Fish and Game Department sweating getting back a combined total of 4,500 adult spawning steelhead (less than one percent) to replenish egg stock for the following year, something is drastically wrong.

To add insult to injury, this Salmon River expectation has created extreme disappointment for sportsmen and accompanying economic hardship for all those associated with recreational steelhead sport fishing. We are talking about vehicles and gasoline, lodging, food, fishing equipment/sportswear manufacturers and retailers, outfitters and guides, boating equipment manufacturers and retailers, etc., and everybody else right on down the line. We are talking about dreams, plans, goods, and services that keep alot of people employed and provide considerable economic benefit as a direct result of steelhead sport fishing. Steelhead sport fishing is big business in Idaho.

We are not talking anymore about the "good ole days" when Salmon River steelhead runs were wild and natural reproduction supported harvest and replenished the supply for subsequent years. We are not talking about "free" Salmon River steelhead. We are talking today about Salmon River steelhead that non-Indians support, an entire and separate resource in which the Columbia River Indians do not contribute to production, cost, or in any way.

Steelhead - Columbia River Indians and the Salmon River
Page two

When the Salmon River spring steelhead regulations restrict a sport fisherman to one fish a day, two in possession, and a limit of three for the season, it is hard to justify making a trip over the hill to the Salmon River to fish. When it is estimated that the average sports fisherman spends close to \$100 per steelhead to pursue, release, or catch a Salmon River steelhead, somebody is paying, and it is not the Columbia River Indians.

The big question today is, do the Columbia River Indians have the right to take Idaho "out of" the Salmon River steelhead resource or to damage the resource in any way? Is this what our non-Indian forefathers had in mind when they signed Harvest Treaties? That "treaty rights" should be racist and superior and manipulated to discriminate against non-Indians with prejudice? I would like to believe that this is not the case and that common sense and sharing the steelhead resource is possible.

It is a well known fact that today's Salmon River steelhead cost alot of money to produce and even more management and effort to nurture along in order to have survival and a return of adult spawning fish. It seems only fitting that the economic aspect of Salmon River steelhead be given serious consideration.

It costs approximately fifty cents per fish to raise a steelhead smolt to a six ounce fish suitable for release. Add two cents more per smolt to deliver him to the Salmon River. Add another two cents per smolt for "operation fish run" around the Columbia River dams. Multiplying six million smolt times four cents per fish yields a cost of over three million dollars for only the upper Salmon River release.

If you want to amortize in the \$90 million spent on Columbia Basin Hatcheries, by-pass facilities, traps, labor, equipment, etc., you can add in whatever other amount you wish. Who is paying for the Salmon River steelhead? It's not the Columbia River Indians.

The expectation today of hatchery steelhead left in the Salmon River for spring, 1985 spawning is less than 4,500 fish. If sports fishermen under severe restriction reduce to possession this spring a thousand of the 4,500, you are left with 3,500 hatchery steelhead to replenish the entire egg stock for the following year's run. Who cares? It's not the Columbia River Indians.

How much do Columbia River Indians receive for a bright fresh ocean steelhead that averages ten to twelve pounds? It varies from \$1.19 to \$1.49 per pound or on the average about \$14.40 per steelhead. How much do Columbia River Indians pay for these Salmon River steelhead? The answer is "zero".

Steelhead - Columbia River Indians and the Salmon River
Page three

If one were to assume that an average Indian family could eat one average twelve-pound steelhead every other day for an entire year times two-hundred Indian families, it would require their harvesting about 36,000 steelhead for what most people would consider a "luxurious subsistence".

If there were 315,000 steelhead over Bonneville Dam and only 91,000 over Granite Dam and the Columbia River Indians admit to gill netting 70,000 steelhead, that would leave about 154,000 steelhead suspiciously missing in action. Of course, their are fairly substantiated reports that Indian gill nets damaged or killed approximately 95,000 more of those missing in action fish that quite possibly their "actual harvest" was as much as twice that reported by them.

If the Columbia River Indians need 36,000 steelhead for subsistence and the balance of the seventy thousand reportedly caught, then 34,000 were for commercial exploitation. Taking 34,000 times \$14.40 per fish would yield about \$489,600. Each of the 200 Columbia River Indian families would then have substantial income that will buy alot of groceries and we are no longer talking about a subsistence situation.

If the Columbia River Indians caught twice as many as they report, then you can double the income figure. If their gill nets injured or killed another seventy thousand plus steelhead, then you can triple the value damage to the resource.

It is unfortunate for this year's Salmon River steelhead that they were in the wrong place at the right time because most of those fish caught in gill nets by Columbia River Indians were, in fact, Salmon River steelhead--fish that they did not pay for--fish that they stole from upriver sports fishermen--fish that they stole from Shoshone and Bannock Indian Salmon River tribes.

Are we supposed to turn our heads and let this rape of the Salmon River steelhead continue? Tell me if you think we are not directly subsidizing the Columbia River gill net fishery. Should these steelhead be free to the Columbia River Indians or should they be charged five dollars or more for each fish they catch to help replenish the resource? Should they be completely restrained from the highly lucrative gill net fishing for public supported fish like the Salmon River steelhead?

The Columbia River Indians know exactly whose fish they are catching when their nets are in the water. The kind of fish they are hauling in are fin-clipped Salmon River hatchery fish. They selectively decimated an entire river system's return full well knowing exactly what they were doing. Wouldn't it be better to give these Columbia River Indians an outright check for \$10,000 for each family for the value of the fish they might catch and let the steelhead continue their run so that upstream sportsmen and Idaho Indians don't get short-changed on the resource? Doing this would go a long way to helping save the millions of dollars already spent on producing the resource. It would allow upriver folks to derive some economic benefit.

Steelhead - Columbia River Indians and the Salmon River
Page four

And what about the Salmon River Wild Steelhead? The Idaho Fish and Game Department anticipates but a few hundred of them managed to escape the deadly nets to make the trip into the headwaters of the Salmon River to spawn naturally. There is no question in my mind, given the downriver selfishness that is occurring, that all steelhead in the Columbia River drainages should be elevated to National game fish status with full legal protection to include protection from Columbia River Indians that have superior rights to non-Indians under the guise of Treaty harvest.

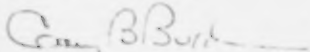
It's high time to overturn the "Boldt Decision" and reverse a law that is wrong, unjust, and unfair. It is more than obvious that the Columbia River Indians are not capable of conservation or as diligent as they should be in regulating the gill net fishing of their members in sharing this resource.

So in 1984 the Salmon River has become the "guinea pig" in harsh example of what absence of control by Indian regulation can result in. The Columbia River Indians have picked the Salmon River steelhead resource clean. Which river system will the bite of the net touch this year? Increasing numbers of Salmon River steelhead so that Indians alone can prosper is not the answer.

We, non-Indian sports fishermen, have a right to demand reversing action "now" before the challenge of the 1985 steelhead run commences. I sincerely hope you have the professional perseverance to positively and aggressively put forth a solid, responsible steelhead management plan that includes the Salmon River.

Thank you again for hearing my plea.

Very truly yours,



Gary B. Busch

GBB/mj

GARY B. BUSCH
Post Office Box 742
Sun Valley, ID 83353

February 1, 1985

Bill Wilkerson, Director
Washington Dept. of Fisheries
115 General Administration Bldg.
Olympia, WA 98504

Jack Donaldson, Director
Oregon Dept. of Fish & Wildlife
P. O. Box 3503
Portland, OR 97208

BUT WHERE'S THE SALMON RIVER STEELHEAD?

This letters' to dispel any thoughts the Columbia River Compact members might have along the lines that the folks in Idaho and the rest of the country, don't know or care about what was allowed to occur in the 1984 Salmon River-Columbia River steelhead gill net fishery. Further, I hope that the Compact and Indians aren't considering that they can pull it off for another year before anyone is the wiser.

We have every intention of bringing last summer's devastation of the Salmon River 'A' run (both wild and hatchery) into the 1985 "public eyes" of as many agencies, politicians, sportsmen groups, media sources, and concerned people (taxpayers) as we can possibly reach. I, for one, want the whole world watching you and monitoring your decisions come next June when the summer run steelhead enter the Columbia River Basin river system.

Are you trying to make the Salmon River "The Designated Steelhead Factory" for the Columbia River Indians? Do you expect that real Americans are going to continue to pour their tax dollars into a steelhead resource that they alone support when they derive no benefits?

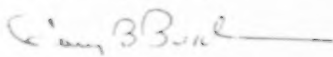
Unlike the American Negro, who for centuries struggled for "equal rights" to all others, the Columbia River Indians continue to retain superior rights over all other American citizens. Great, "equal rights" in reverse!

Upriver businessmen and sportsmen have genuine concern and do urge your careful consideration of the actions and responsibilities intrusted in the Columbia River Compact. We are hopeful that in summer of 1985, the Columbia River Compact fishery managers and Indian tribes will take a more responsible attitude in the equitable distribution of Salmon River steelhead, a tax supported resource, that you are charged by law to preserve and protect.

Bill Wilkerson
Jack Donaldson
February 1, 1985
Page 2

Thank you for hearing my thoughts.

Very truly yours,



Gary B. Busch

GBB/tm

cc: President Ronald Reagan
Department of Agriculture
Department of the Interior
Senator James A. McClure
Senator Steven D. Symms
Governor John V. Evans
Army Corps of Engineers
Northwest Power Planning Council
Clare Conley, Editor, Outdoor Life
Idaho Fish and Game Department
S/SPAWN
ET.AL. (100 plus)

GARY B. BUSCH
Post Office Box 742
Sun Valley, Idaho 83353

March 1, 1985

Bill Wilkerson, Director
Washington Department of Fisheries
115 General Administration Building
Olympia, Washington 98504

Jack Donaldson, Director
Oregon Department of Fish & Wildlife
Post Office Box 3503
Portland, Oregon 97208

This letter is being written to give you an idea of the ongoing scope, depth and impact that your Columbia River Anadromous fishing decisions have on your Idaho neighbors. This is the fourth letter since September 1984 that I have directed to the two of you and to date I have not received a response to the first three. I am simply attempting to obtain explanation as to what your assessment and public position is with regard to Salmon River Steelhead. Does your silence mean that you are trying to "cover-up" wrongdoing or mis-management on behalf of the Columbia River Compact?

Maybe my letters should not be directed to you. If not, please tell me the names and addresses of the people responsible for making CRITFC gill-net fishing decisions. I am concerned that there is a misappropriation and expenditure of tax dollars that might result in punishable Federal offense. I want to know whose job can be placed in jeopardy for making wrongful public trust management decisions.

You have my every assurance that I will continue to write these letters with regularity until I receive your assurance that the Salmon River won't be picked on again or until my letters start falling on someone's desk with enough wisdom, concern, and power to do something about it.

It was not an accident that the Salmon River 1984 "A" run of steelhead met the fate that picked this river system clean. Was it CRITFC greed and lust for commercial economic gain from the sale of our fish? Or was it Washington and Oregon protecting their respective states' interest by directing CRITFC attention to harvesting Idaho bound steelhead in order to reduce the impact on their own local river systems and tributaries? To me this raises the question of whether Washington and Oregon are truly capable of making unbiased decisions that ultimately effect Idaho's steelhead run.

In this regard we are talking about possible violation of the "Public Trust Doctrine". We are talking about the responsibility to manage this Salmon River Steelhead resource for the benefit of the public. To do that requires efficient resource allocation and broad economic efficiency that goes beyond the market price for steelhead. It means avoiding wanton resource exploitation by CRITFC. The true value theory of a non-market public trust resource recognizes that there are many benefits of fish to people in addition to commodity values. Why does "public trust" not apply to Columbia River Indians?

March 1, 1985

Bill Wilkerson, Jack Donaldson

Page two

Last Sunday after having fished Section Six of the Salmon River hard all weekend for steelhead we did not touch a fish nor did we catch a steelhead in two previous outings this year. We did catch nine three to four pound native Salmon River suckers (it's not funny) and we continue to question the expenditure of time, money, and effort in this pursuit.

Here it is the first of March and we have fewer than twenty steelhead in the Pahsemeroi steelhead trapping facility on the Upper Salmon River. We have talked to numerous steelheaders who have spent countless hours fishing for steelhead, and in collectively comparing conversations you could count the fish verifiably caught on your two hands. These are ardent fishermen who know what they are doing.

Do you think there isn't some cussing and swearing going on? They are blaming the Columbia River Compact, not the Indians, for the lack of fish in the Upper Salmon River. The talk is about lack of control and a select group of Indians who only have to work six weeks of the year for a ten and a half month vacation. Is that the American way?

Many of the so called sportfishermen are actually subsistence fishermen trying to feed their families on a three fish season. Do you think there might be some poaching and disregard for the season limit going on? Your 1984 decisions have created a veritable nightmare for Idaho Conservation officers trying to police upriver harvest. In addition, the uncontrollable and uncountable harvest by subsistence folks further depletes the number of adult fish needed to replenish future runs.

We are talking about proud people from an economically depressed area who are not the kind of people who have the time to write letters to voice their displeasure with what has occurred. Most are too busy doing pick-up work trying to feed their families. So the Indians continue to eat steak from the sale of steelhead while real Americans, the businessmen, sportfishermen, and less fortunate folks upriver suffer from your decisions.

We purchased steelhead fishing equipment for our young sons as Christmas presents this year in anticipation of their first year of Steelhead fishing. Now do you tell an eager, teary-eyed kid that there are so few Steelhead in the Salmon River that it's not worth making the trip. What do you tell them when they ask you why? Is your answer mismanagement or do you want to destroy their youthful innocence by having them grow up hating Indians all their lives?

On the way home we drive by the beautiful new twelve million dollar Sawtooth Anadromous facility paid for by tax dollars, not Indian dollars. I can't help but wonder why the lights are all on and it's staffed and being maintained when there will only be a handful of steelhead coming into it this spring.

March 1, 1985
 Bill Wilkerson, Jack Donaldson
 Page three

We keep on fishing and hoping it isn't true that there won't be any steelhead this spring. Do you know what it's like to experience the frustration of seeing your hopes, dreams, and anticipations go into the pockets of CRITPC commercial fishermen?

Once again I urge you to consider the residual impact of cause and effect that goes all the way down the line when you make your decisions in Summer of 1985. Thank you again.

Very truly yours,

Gary B. Busch

GBB/mj

cc: President Ronald Reagan
 Department of Agriculture
 Department of the Interior
 Senator James A. McClure
 Senator Steven D. Symms
 Governor John V. Evans
 Army Corps of Engineers
 Northwest Power Planning Council
 Clare Conley, Editor, Outdoor Life
 Idaho Fish and Game Department
 S/SPAWN
 Idaho Power Company
 Grace Commission
 ET.AL. (100 plus)

Gary B. Busch
Post Office Box 742
Sun Valley, ID 83353

March 15, 1985

Bill Wilkerson, Director
Washington Dept. of Fisheries
115 General Administration Bldg.
Olympia, WA 98504

Jack Donaldson, Director
Oregon Dept. of Fish and Wildlife
Post Office Box 3503
Portland, OR 97208

SALMON RIVER STEELHEAD

It's the middle of March and Salmon River sport fishermen are still waiting for their share of the 1984 Columbia River Steelhead run. Upriver fishermen are still paying the price eight months later with reduced limits and reduced opportunity to fish (shorter season) because of excessive CRITFC commercial harvest in the Columbia River last summer.

You should be made aware that we are experiencing an unusually severe winter in the Salmon River Country with temperatures running about 20 degrees colder than normal. This means that ice blockages to this date in the Salmon River have prevented any significant movement of migrating steelhead that might present opportunity to sport fishermen.

If you combine the IDFG need to shorten the season with reduced limits in order to meet minimum trapping goals with the above mother-nature created cold weather phenomena, then upriver sport fishermen wind up with about one decent fishing week (last week of March with season closing March 31st). And this is only true if we don't get a sudden warming spell which, needless to say, could render the upper river unfishable because of heavy tributary and feeder canyon runoff.

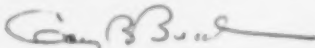
If there are 10,000 steelhead (1984 "A" run) in the Salmon River somewhere and it is assumed that sport fishermen will harvest 5,000 and that IDFG will trap 5,000 to achieve minimum replenishment goals, there is no doubt in my mind that given the present Idaho fishing season structure, you are going to be able to say come May 1st that the IDFG Salmon River goals were met.

The reason the IDFG trapping goals might be met is because sport fishermen will not catch their 5,000. I can tell you right off that my personal steelhead fishing goals, anticipations, and dreams will not be met. With 314,000 steelhead over Bonneville Dam, I am down to sweating it out to catch a fish this season with reasonable opportunity for one week in March. You tell me what's right and what's wrong...

It looks like the bottom line for Salmon River sport fishermen, outfitters, and all related businesses is that they get short changed and cheated out of any significant opportunity this year. So where is my share of one-half of the harvestable surplus? Did my one-half get sold? Does Idaho's one-half have to take their chances on making it back home? Whatever happened to trust and risk-sharing in the management plan for the Salmon River.

Thank you again for hearing the continuing story that will follow the 1984 steelhead run all the way through.

Very truly yours,



Gary B. Busch



STEELHEAD PAPERS # 7

Sun Valley

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

March 25, 1985

United States Fish and Wildlife Service
Department of the Interior
Washington, D.C. 20240

RE: COLUMBIA RIVER INDIAN GILL-NET FISHERY

Dear Anadromous Fishery Representative,

Please read the enclosed Steelhead-Salmon River related material and then respond as you wish. I am attempting to get at the truth as to why the Salmon River-Idaho 1984 Steelhead run was decimated by the Columbia River Indians.

I am told that the USFWS is the only entity allowed on closed tribal grounds to monitor this gill-net fishery. The States of Oregon, Washington and Idaho are not allowed to have representatives on-site to confirm harvest counts and to double tag wire tags on selected branded adult migrating Steelhead.

In recent conversation I have learned that there is in fact tremendous waste of this Steelhead resource by the Columbia River Indians. The waste occurs in addition to actual numbers of fish reported caught and sold commercially under treaty rights.

Let me explain. The waste occurs in two ways I am told. First in the event that the Indians do not timely "pick-the-net" within a few hours of the time of fish entrapment in the monofilament gill net, then the 72 degree water quickly renders the flesh of the fish unfit for consumption or sale to commercial Steelhead fish buyers. The Indian answer to this problem is to simply pick the dead fish out of the net allowing them to fall "unaccounted" to the floor of the river.

March 25, 1985
 United States Fish and Wildlife Service
 Page two

Secondly, I am advised that in many instances in the process of picking their gill nets on bountiful trapping days, the Columbia River Indians may actually fill their boats with fish before a given set of nets are completely gilled. Apparently the nets must be completely cleaned out of dead Steelhead before they can be reset. The Indians' answer to this little problem is the same as the first case. Simply release the dead "accounted" Steelhead into the river current to decompose and disappear with no one the wiser.

My concerns are as follows:

Are these practices allowed to occur under the reasonably watchful eyes of the USFWS representatives?

Are there payola kickbacks to these USFWS representatives to turn their heads or disavow that such practices are occurring?

The wastage of fish lost in this manner denies upriver sport fishermen the opportunity to share in the resource.

The above wasteful practices deny accurate recordation of fishery data that reflects portrayal of what is actually occurring within a given Steelhead return.

If the above practice is occurring we could now account for the missing 27,000 Steelhead between Bonneville Dam and McNary Dam (the second dam on the Columbia River).

Why did USFWS representatives not recognize that a thermal blockage existed and act accordingly to delay, postpone, or reset Columbia River Indian fishing dates so that the Salmon River Steelhead would not be so severely impacted?

Why does the USFWS not immediately decode (within 24 hours) the wire tags in the heads of returning adult Steelhead so that the biologists on the scene can determine exactly whose game fish are being massacred?

Why does the USFWS fail to recognize that the Salmon River Steelhead come up the Columbia River System first because they have the greatest distance to travel (800 plus miles of river system)?

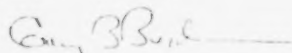
Why does the USFWS fail to recognize that over 70% of the "A" run fish are Idaho origin fish supported by Ten dollars, mitigation, electric fees, state license fees, etc.

March 25, 1985
United States Fish and Wildlife Service
Page three

I could go on and on about what went wrong last year in the excessive harvest of Salmon River Steelhead but I won't. It would be reassuring to hear from you about what is being done to prevent recurrence. It would be nice to learn that there is an element of reason and making sense in Steelhead resource management at work. (I sincerely hope that the USFWS does not take the posture that it's just a bunch of "good ol' boys" from Idaho who won't do anything about their sportfishing rights.)

Thank you for hearing my plea for equality in fishing rights.

Very truly yours,



Gary B. Busch

GBB/mi

cc: President Ronald Reagan
Department of Agriculture
Senator James A. McClure
Senator Steven D. Symms
Governor John V. Evans
Army Corps of Engineers
Northwest Power Planning Council
Clare Conley, Editor, Outdoor Life
Idaho Fish and Game Department
S/SPAWN
Idaho Power Company
Grace Commission
CBS (60 Minutes)
U. S. Attorney General
Oregon Department of Fish and Wildlife
Washington Department of Fisheries

STEELHEAD PAPERS #3

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

April 1, 1985

Bill Wilkerson, Director
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Jack Donaldson, Director
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Portland, OR 97208

SALMON RIVER STEELHEAD

The words "Target Steelhead" bother me alot. Idaho folks have learned real well in 1984 what this means. It's not a general target of steelhead for gill-netting. It is rather a question of how do we best target "Idaho" steelhead or even better, target Idaho Salmon River steelhead and get away with it for another year.

How about Idaho steelhead sport fishermen targeting Columbia River Indians for political embarrassment. The greed of the Columbia River Indians is creating a deteriorating image for all Indian Nations. The lust for a free lunch on net-net-net dollars with no cost to them in supporting the resource has taken their actions beyond reasoning capability when it comes to conservation of the Columbia River Basin steelhead resource. If you share in the harvest, you should also share in the upriver problems of disease control, habitat restoration, production, upkeep and maintenance of facilities, etc. The dollars committed to share in these real costs of the fishery should come directly from the sale of harvested fish and not real American tax dollars and electric rate-payer mitigation fees.

I have recently learned that the reason for CRITFC targeting steelhead is the expiration of a five year plan in 1982 wherein the Columbia River Indians agreed to only target salmon and other related species but excluding steelhead. With depletion of the Pacific Ocean salmon stocks, somehow this select group of Indian commercial fishermen figure they were shorted some 370,000 salmon during the term of the five year target salmon plan. So now steelhead pay the price with Indian vengeance quickly accelerating to make up the aforementioned loss.

Idaho summer run Chinook Salmon sport fishermen have not had a Salmon River season since 1977. It does not take much research to learn why this is true. Guess who almost made the Upper Salmon River Chinook stock become extinct? The answer is primarily Pacific Ocean and CRITFC commercial fishermen. The disposition in sharing this resource certainly has not been a very Democratic process.

Does increasing quantity of steelhead production each year in the Columbia River Basin "automatically" mean that CRITFC gets more and I get less? Are gill net fishers entitled to 100 percent harvest of 50 percent of the harvestable surplus over minimum survival of the Salmon River stock? If 70 percent of the Columbia River "A" run steelhead are Idaho origin fish, and if one-fourth of the tribes membership is Idaho origin (Nez Perce) and three-fourths are Washington/Oregon origin (Yakima, Warm Springs, and Umatilla), then it stands to reason that CRITFC should only be allowed one-half of the harvestable surplus of one-fourth of the base of originating fish in direct proportion to tribal make-up and treaty entitlement.

Bill Wilkerson and Jack Donaldson
 April 1, 1985
 Page Two

When I witness a group of church women from Idaho Falls drive 300 miles round-trip to the Pahsemeroi trapping facility to hopefully obtain a few spawned-out steelhead on an egg taking day to feed their local senior citizens and orphans, it makes me real emotional when I consider what is going on down-river. The pain is doubled because I did not get my simple sport fishing opportunity in the Salmon River from this run of fish. The pain is tripled when I learn of Columbia River Indians wasting the resource by not utilizing all of the fish they kill in gill-nets.

Idaho Power Company should be concerned about the millions of dollars its stockholders and rate-payers have invested in Idaho's Anadromous fish runs. Idaho Power is one of our strongest contributors to the non-payer Columbia River Indian gill-net fishers at the expense of Idaho sport fishermen who are the "actual rate-payers" we are talking about. Has this entitlement factor been taken into consideration by the Courts, The Compact, and CRITFC?

When CRITFC flies their chief counsel (Policy Assistant) to represent the Columbia River Indians in Idaho townhall steelhead meetings to put out the "hotspots" and to smooth things over, then Idaho sport fishermen are in bad trouble. Obviously, CRITFC cares enough (\$\$\$\$\$) to be defensive about any and all criticisms leveled against the tribes. Their attorneys and biologists are real good at fighting us with our own tax dollars (salaried by Department of Interior - Bureau of Indian Affairs). And to think that our own IDFG cannot even afford a full-time attorney for all of its business let alone the specific concern of Anadromous fisheries.

Please allow me to share my 1984 Salmon River - Section 17 steelhead fishing log with you.

<u>Month/Day</u>	<u>Hours Fished</u>	<u>Native Suckers</u>	<u>Steelhead</u>	<u>Trip Cost</u>
Nov. 22	8	5	0	
23	6	1	0	\$ 130
Dec. 5	4	0	0	
6	6	1	0	130
Jan. 19	4	1	0	
20	4	3	0	130
Feb. 2	3	1	0	
3	6	3	0	130
Mar. 7	3	6	0	
8	6	3	0	130
15	6	2	0	30
22	6	1	0	
23	10	2	0	
24	7	2	0	165
29	10	3	1	
30	3	2	0	
31	7	2	0	165
TOTAL 17	112	38	1	\$1,060

Bill Wilkerson and Jack Donaldson
 April 1, 1985
 Page Three

Well, I finally did it after 112 hours of hard fishing, I caught my \$1,060 Salmon River steelhead on the last weekend of the season. This one was an eleven pound male, so it only cost me \$96.36 per pound. Do you know what I did? I released it unharmed because I care about conservation and perpetuation of the species. My thousand dollar beauty swam on upriver...

When I compare the above negative results with 1933 when I caught 56 steelhead drift fishing on home-tied flies in this same section of river with about the same number of fishing days, I get madder than hell because the fish are just not there. Of the 56 fish I caught on barbless hooks in 1933, fifty were released in good shape so that other sport fishermen might have opportunity to catch them upriver or the fish continues his journey to spawn. Compare this philosophy to Indian Treaty gill-net harvesting where 100 percent of anything that hits the net is "dead meat." I wonder how many thousand more Salmon River steelheaders can boast of a 1984 fishing log like mine?

Considering the length of the Salmon River system and the increasing contribution of juvenile steelhead to this river system, I think that Salmon River sport fishermen should be guaranteed at least 40,000 adult steelhead over lower Granite Dam before any treaty commercial fishing is even considered. The priority should go to the people who produce and pay for the resource, not those who drag it down with antiquated treaty rights.

It is fair to say that upper Salmon River residents and businesses are not looking for an increasing unlimited number of steelhead in their river each year, but in the future they will be looking for and should be entitled to a minimum guarantee. If we were to achieve forty thousand, most would be happy. The "Compact" and CRITFC must not lose sight of our goal as it relates to the "common goal."

The only power steelhead sport fishermen have is "word power," the written and spoken word. You can only silence died-in-the-wool steelheaders for so long before they stand up for their resource rights and entitlements and receive their due attention.

Thank you for hearing my plea for equality in fishing rights.

Very truly yours,

Gary B. Busch

Gary B. Busch

GBB:tm

cc: President Ronald Reagan
 Department of Agriculture
 Senator James A. McClure
 Senator Steven D. Symms
 Governor John V. Evans
 Army Corps of Engineers
 Northwest Power Planning Council

Clare Conley, Editor, Outdoor Life
 Idaho Fish and Game Department
 B/SPAWN
 Idaho Power Company
 Grace Commission
 CBS (60 Minutes)
 U. S. Attorney General



Sun Valley

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

April 4, 1985

Don F. Swartz
Staff Fish Biologist
Oregon Department of Fish and Wildlife
Post Office Box 3503
Portland, Oregon 97208

Dear Don,

Thank you for your March 29th letter which I received yesterday. It was reassuring to learn that the Oregon Department of Fish and Wildlife has received my frequent letters and has at least considered some of the salient points that I have attempted to make in a constructive vane on a very complex subject. The purpose of my continual involvement has been to give your staff some emotional stream side points-of-view (as it differs from hard statistical biological data) as to what the common Idaho sports fisherman's assessment of the up-river situation is in reality to him.

It would be difficult to convince me that the intent of the Columbia River Compact and CRITFC is not to attempt to shut Idaho out of the Steelhead resource via manipulation of the zone six gill-net fishery. The reason the Salmon River system is failing "is" because the Washington and Oregon Steelhead river systems are prospering. I could build a pretty strong case for saying that Steelhead "A" stocks were not co-mingled in the mainstream of the Columbia River as you suggest in your letter. The failure of the Salmon River Steelhead program, to me, is spelled season setting (timing), selective targeting certain stocks, and duration of concentrated gill-net fishing permitted on the Salmon River stock.

A good example of the point I would make is to have you consider the following. Of a release of 364,000 "A" smolt in 1982 and 106,000 "A" smolt in 1983 at the new Sawtooth Fish Hatchery as of April 1st there were zero adult returnees as one or two salt fish. In addition, the 1982 release of almost 60,000 "B" smolt at the new East Fork Trapping Facility which should be returning as two salt fish this year on April 1st we had the same result, "zero" adult return. Perhaps the "Court

April 4, 1985
Don F. Swartz
Page two

and The Compact" should be considering restricting tribal fisheries because in this instance we are talking about "conservation measures necessary to prevent extermination of a stock species."

Idaho is being denied the opportunity for "public accountability" of a resource that originates in Idaho. We want a "fair process" and a "public process" in the disposition of the Steelhead resource.

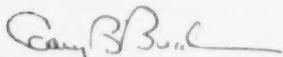
Last year we did not see Steelhead management decisions being made rationally and cooperatively. The policy of The Compact and CRITFC making powerful Godlike closed door decisions should be reversed. In the future public input should be encouraged and biological based policy decisions on this public supported resource should be made in the OPEN.

I do not accept fish buyer reports as being an all inclusive barometer of actual harvest in the zone six fishery. It is just too easy to give fish buyers several extra tons of fish for the right to do business with them and to hold market prices up for fish being sold. There were far too many unaccountable missing fish between Bonneville and McNary dams last summer/fall. We do have pretty fair insight as to where the mystery disappearance might be occurring as you will note from the enclosed document which is now circulating around Idaho.

If I were to be granted only one request by CRITFC and "The Compact" for the forthcoming 1985 Steelhead run in the Columbia River Basin, it would be to have them allow an Idaho representative to be present on the usual and accustomed fishing grounds who can count harvested fish and immediately access coded fish data to determine whose fish are being caught, how many, and at what time. A progressive leadership challenge such as this would certainly allow The Compact, CRITFC, and Idaho to better understand and analyze Steelhead data in a more Democratic arena.

Thank you again for responding to my letters. I do appreciate your consideration and realize that it was not an easy task to assume.

Very truly yours,



Gary B. Busch

GBB/mi
Enclosure

Gary B. Busch
Post Office Box 742
Sun Valley, Idaho 83353

May 1, 1985

Bill Wilkerson, Director
Washington Dept. of Fisheries
115 General Administration Bldg.
Olympia, Washington 98504

Jack Donaldson, Director
Oregon Dept. of Fish and Wildlife
Post Office Box 3503
Portland, Oregon 97208

SALMON RIVER STEELHEAD

This letter is the tenth and last letter concerning the poor adult Steelhead return in 1984 to the Salmon River to the detriment of Idaho sport fishermen and the economics of related businesses and industries that support this resource. The big question posed for 1985 is how will the "Columbia River Conspiracy" justify continuing to make trades, concessions, and closed door decisions for Idaho Anadromous fish that benefit only their respective interests. It will be interesting to see how Washington, Oregon, and CRITFC divide up Idaho Anadromous fish this year.

Most Salmon River Steelhead fishermen have long since forgotten how bad fishing was this last season. I am elated that the IDFG managed to meet their Salmon River goals with "sufficient fish and eggs to continue all routine and expansion projects" but I am also equally discouraged and disappointed and will not soon forget the opportunity that I and other Idaho sport fishermen missed in the 1984 Steelhead run. Everyone, (CRITFC, Washington, Oregon, IDFT) except Idaho Salmon River Steelhead sport fishermen came out winners in the 1984 run.

In comparing conversations with other Salmon River sport fishermen during the last week of the season (March 23-31) about 70% of the "A" run hatchery Steelhead being caught had gill-net scars. We were correct in our allegation that the Salmon River stock was hit hard early in the commercial harvest season in the zone six fishery. It is surprising given the fact that 20% gill-net scarring is biologically considered high that this ratio of fish actually survived to make it another 600 miles. The Compact and CRITFC fish managers should have reacted last summer but instead chose to ignore the public outcry when concerned citizens pleaded "fowl" to increased harvest seasons and tonnages based solely on dam counts and the greed for what was thought to be surplus fish.

It is real easy with biological and statistical data manipulation to forget about the last benefactor on the end of the Steelhead resource line, the Idaho sport fisherman, the guy who helps support and pay for the resource. Who are we producing Anadromous fish for? Are we building the resource up for CRITFC commercial harvest solely for production of income? Is the nature

May 1, 1985
 Bill Wilkerson
 Jack Donaldson
 Page two

of the game enhancement of science so that biologists can prove this or that wizzardry? My point is that if one element of management fails then the entire present system falls down. It's too easy to forget Idaho sport fishermen and when you do, the system is not responding to the needs of all the people.

It appears that the setting of Columbia River commercial harvest seasons are ideal for the coming year. CRITFC can start out early on Spring Chinook asking for increased harvest; they can then shift to Summer Chinook and Salmon River "A" Steelhead again justified by ever increasing dam counts and probably even apply for several extended gill-net seasons and get them; next comes the feast on the bumper crop of 50,000 Clearwater "B" Steelhead and Salmon River Wild Steelhead which just happen to be in the river at the same time. God only knows how severely the gill-net fishery will impact Idaho this year.

The Columbia River Indians get another year of "the first Salmon feast", "the mid-summer Steelhead and Summer Salmon feast", the Fall Steelhead and Fall Salmon feast" together with lots of subsistence, tax-free income, and ceremonial hoopla while Idaho sport fishermen get another year of hoodwinking, few fish, and not even token acknowledgement that an upriver Idaho sport fishing public even exists. It probably doesn't matter to these "first in right Indians" that they are shortchanging their Shoshone/Bannock neighbors in Idaho on their Treaty Rights.

We have learned enough in 1984 about manipulation of run size statistics and lack of sensitivity to commercial harvest impacts to suggest that the present system is failing. Pursuing a course for correction of the inequities that are occurring would have you seriously consider the following in order of importance:

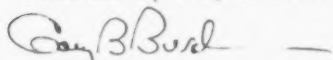
- Assure that Idaho attains its equitable distribution of Anadromous fish returning to each Idaho River System where the fish originate. Minimum spawning escapement should be equally weighted with the rights and entitlements of Idaho Sport Fishermen.
- The immediate identification of the various stocks of fish must be a top priority. When adult Anadromous fish are counted over Bonneville Dam the fishmanager should be able to determine within 24 hours which stock of fish is being harvested commercially. Fish managers, CRITFC, The Courts, The "Compact" must have the flexibilities to change, modify, or restrict commercial harvest while it is in progress on known stocks in order to protect other users of the resource.

May 1, 1985
 Bill Wilkerson
 Jack Donaldson
 Page three

- Anadromous fish managers must push for ways to eliminate the loss and waste of Anadromous fish at the point of harvest. The inter-dam losses are unacceptable in their present numbers. The loss of in excess of 100,000 fish in the zone six fishery alone in one season is inexcusable. Net drop-out, spoilage of netted fish, uncounted harvest, let's figure it out.
- Fish managers must take the responsibility for their own actions and tell it in an accurate straight forward way. The public process must be a Democratic process with full accountability that guarantees fair treatment to all the various public entities. They must have a sense of control that provides due recognition to the rights and entitlement to all parties they serve and they must preserve and protect the resource.

You can bet Idaho sport fishermen will be looking over your shoulder in 1985 closely monitoring run counts, harvest season, harvest catch data, and your decisions that affect the overall Steelhead resource. If the unfolding scenario gets too bad, Idaho sport fishermen will scream like a bunch of stuck hogs.

Yours for equality in Steelhead fishing rights,



Gary B. Busch

GBB/mi

cc: President Ronald Reagan
 Department of Agriculture
 Senator James A. McClure
 Senator Steven D. Symms
 Governor John V. Evans
 Army Corps of Engineers
 Northwest Power Planning Council
 Clare Conley, Editor, Outdoor Life
 Idaho Fish and Game Department
 S/SPAWN
 Idaho Power Company
 Grace Commission
 CBS (60 Minutes)
 U. S. Attorney General
 Oregon Department of Fish and Wildlife
 Washington Department of Fisheries
 Bonneville Power Administration
 Idaho Steelhead and Salmon Unlimited
 Idaho Conservation League
 Jim Jones, Attorney General

Department of the Interior
 E.T.A.L. (100 Plus)

1102 North 46th Street
Seattle, WA 98103
14 June 1985

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington, D.C., 20511

1985 JUN 19 AM 11: 21

Dear Senator Andrews:

I am dismayed to find S. 954, a bill to abrogate Indian treaty rights, before the Senate in this day and age.

We have had plenty of time of look at the history of how white people in this country have treated Indians so far, and to resolve to do better. We have had plenty of time to look at the effect on world order when governments break their word. And we have had plenty of time to look at the effects of racism worldwide, and to resolve to do better in this country.

I have lived in Washington State all my life, and I am ashamed that a bill like S. 954 should be introduced in the name of the people of this state. I would like my comments to be made part of the S. 954 Hearing Record.

Yours truly,



Patricia L. Conroy

M. Eisenhardt
4510 48th Avenue N.E.
Seattle, WA 98105



The Honorable Mark Andrews
Comm. Indian Affairs Com.
United States Senate
Washington, D.C. 20511

Dear Senator Andrews,
I would like to
express my strong opposition
to S. 954.

Milo Eisenhardt

June 17, 1985
409 YORK, # 703
BELLACHADY, WA.,
98225

MEMBERS of the COMMITTEE and
SENATOR MARK ANDREWS
(CHAIRMAN) of the SENATE
INDIAN AFFAIRS COMMITTEE:

REGARDING BILLY RESOLUTION:

S. 954.

AMERICAN INDIANS SHOULD NOT
HAVE their RIGHTS - GIVEN by TREATY
with U.S. GOVERNMENT -
ABROGATED by such proposals
as S. 954.

THE U.S. GOVERNMENT - IN MANY TIMES PAST -
HAS PREVIOUSLY VIOLATED TREATIES
SOLEMNLY MADE with NATIVE AMERICAN INDIANS.

THIS IS EVIL and DISHONORABLE -
in addition to BEING FOLLY.

THE U.S. GOVERNMENT should
FULFILL ALL TREATIES and COMMITMENTS

NOT VIOLATE THEM.

FURTHER - ~~now~~ IN FUTURE - the U.S.
GOVERNMENT should ENTER INTO NO TREATY
OR COMMITMENT THAT IT DOES NOT INTEND
TO HONOR and KEEP.

This is a very serious matter - and I trust
that you will see to it that the
RIGHTS of AMERICAN INDIANS are KEPT
INTACT and HONORED - not BROKEN.

Leonard Fitzgerald

2575 N.E. 85th Street
Seattle, WA 98115
15 June 1985

LSJ:ST 12-1-29

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington, D.C. 20511

Dear Senator Andrews:

Last year an initiative purporting to express support for "saving our salmon" narrowly passed in this state. Few people bothered to read the fine print: existing provisions for salmon protection were to be abolished and instead the fish were to be regulated under a piece of federal legislation that had been repealed before this initiative was ever written; also, Indian treaty rights were to be set aside. Had the initiative been titled "Should we abolish Indian rights?" it would never have passed.

Now this Senate bill has been introduced. I am not sure what constituency's views are supposed to be represented. Washington State is not a nest of bigots who want the United States government to break its word to the Indian people.

The Indian people of this state have worked hard to preserve the salmon, which is not only a food to them, but also a figure in their religion. Lately, Indians, farmers, timbermen, hydroelectric planners and sports fishermen, along with commercial fishermen from the coast all the way from Alaska to Oregon have come together to work to preserve the fish in all its varied habitats. Let's support this effort and forget about S. 954, which is a misguided and dishonorable proposal which would turn the members of this new coalition into enemies.

Please make my comments part of the S. 954 Hearing Record.

Yours truly,

Toby C.S. Langan
Toby C.S. Langan

1985 JUN 13 PM 12:16

Senator Mark Andrews, Chairman
Indian Affairs Committee
United States Senate
Washington D.C. 20511

10 June 1985

Dear Senator Andrews:

I understand that a hearing on S. 954 will be held on June 19, and I wish to express opposition to this bill or any other legislation which would weaken Indian treaty rights.

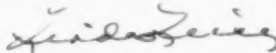
I believe that the Indian fishery has been unfairly blamed for the depletion of the resource when in fact some far more important reasons are: 1) we had no treaty with Canada, 2) the state for many years sold too many commercial licenses, 3) industrial pollution and development have destroyed spawning grounds, and 4) there has been too much illegal off-shore fishing by foreign boats.

Fishing is central to the cultural and economic survival of Pacific Northwest Indian tribes, and they are committed to effective fisheries management.

After decades of court battles, Washington state fisheries agencies, Indian tribes and leading sport fishing organizations finally have begun working together to preserve and enhance our precious resource, and evidence shows that the fish runs, especially in the Columbia, are improving. Treaty abrogation can only cause division and renewed bitterness among this coalition.

Most importantly, I believe that we are an honorable nation and must stand by our word. The treaties which were signed by representatives of the United States Government guarantee tribal fishing rights in exchange for millions of acres of land, and I sincerely hope that this nation will continue to respect those treaties.

Very truly yours,



Linda M. Leisy

2509 82nd Ave. N. E.
Bellevue, Wa. 98004

#2 West Hotel 25
 June 12, 1935

Senator Mark Andrews
 Chairman
 Indian Affairs Committee
 United States Senate
 Washington D.C. 20541



Dear Senator Andrews:

I think of nothing to append
 to the enclosed Declaration from
 the American Friends Service
 Committee. Please take it under
 your advisement. Thank you.

Sincerely
 Mary D. Roberts

SENATE HEARING SCHEDULED
ON LEGISLATION
TO ABROGATE
INDIAN TREATY FISHING RIGHTS

S. 954, a bill to abrogate Indian treaty rights to harvest steelhead for sale, will be the subject of a hearing to be held June 19th, 1985 in Washington, D.C. before the Senate Committee on Indian Affairs. The American Friends Service Committee is strongly opposed to the enactment of S. 954. We oppose the legislation because it is dishonorable, unnecessary and ultimately bad for the fisheries resource and for Indian tribes.

Unilateral proposals to take away tribal steelhead rights are dishonorable because they set aside our word of honor given in the treaties. We cannot afford morally to become a nation that breaks its treaties at will. We will benefit as a people if we stand by these promises.

Treaties between Indian tribes and the United States are legally binding contracts which guarantee the property rights of both parties. In the treaties, the tribes ceded millions of acres of land to the United States in exchange for a guarantee that Indian fishing rights would be protected and respected. In the treaty negotiations, the tribes bargained hard for, and obtained, guarantees of protection for their fishing rights. Proposals to upset this bargain and take away tribal property rights are in effect proposals which would undermine the basis for the title to all of the land in Washington State. Non-Indian citizens have benefited enormously from the treaties. Indians should be allowed the peaceful enjoyment of the rights they retained in the treaties.

Over the past decade, many in the Pacific Northwest have stood up for the protection of Indian treaty rights to harvest steelhead and salmon. We have

watched as Indian tribes and state fisheries agencies have worked out agreements for cooperation and management of the fisheries resource. We have witnessed the formation of an amazingly broad coalition — including sports fishing groups, timber land owners, environmental groups, labor unions, churches and others. This coalition is committed to working out natural resource use and allocation issues in ways which protect renewable resources and promote the interests of all parties. We see S. 954 as a step away from these cooperative efforts.

The information in our hands suggests that the steelhead resource has not suffered under cooperative management and tribal commercial harvests. A May 28th, 1985 joint press release of the Northwest Indian Fisheries Commission and the Washington State Department of Game announced that their biologists "... think the total catch may be the largest since 1979-80, or possibly even the best since the great season of 1971-72." We are also told that Columbia River steelhead runs this year were at record levels. In the face of these successes, we believe it is peculiarly inappropriate to take unilateral steps to abrogate Indian treaty rights.

Fishing for steelhead is central to the cultural and economic survival of Indian tribes. The crucial role which fishing plays within Indian communities is one reason why Indian tribes have strong commitments to effective fisheries management and conservation.

Over the past decade, we have been working it out in Washington State. It has taken a lot of work to increase the understanding and cooperation to the level it is today. Proposals such as S. 954 undercut this cooperation. S. 954 should be rejected. Steelhead treaty abrogation should never again be put into the form of proposed legislation.

June 10/55

Dear Senator Rudinow,

Please - ^{1955 JUN 17 PM 1:53} enough is
 enough! Must we continue
 to take from the Indians?

Please - vote NO on
 S. Bill # 954. Here, in Washington
 State, we're beginning to
 work for the benefit of all -
 Don't let it be as nothing

Thank You
 Natalie E. Rudolph
 P.O. Box 10095
 Bainbridge Island WA
 98110



MRS NATALIE RUDOLPH
 P.O. BOX 10095
 BAINBRIDGE ISL WA 98110

RE: S 954

MAY JUN 24 AM 9:34

Senator Andrews
Chairman, Indian Affairs
U.S. Senate
Washington D.C.
20511

June 12, 1965

Dear Senator:

I desire to do all in your power
to defeat S 954. As a
former commercial Alaskan
Salmon fisherman, I am
opposed to any attempt to
abrogate the rights of the
First Americans. Reformation,
wild control, adequate habitat
protection and ~~other~~ similar
measures is the way
to save the Salmon
and the fisheries and
production, not by elimin-
ating the ancient traditions
of our coastal Indians.

Sincerely,

Wing A. Schwartz
443 25th P
Seattle, WA
98112

Route 4, Box 192
Idaho Falls, ID 83402

June 17, 1985

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Andrews:

Thank you for your letter of May 29, 1985, which invited me to submit testimony on S.954, a bill which would provide additional protection of steelhead trout as a game fish. I will be unable to testify in person; therefore, I respectfully request that you accept this letter as my written testimony for the record.

I am totally in favor of S.954, and I urge its adoption by Congress.

It is impossible to overstate the depth of emotions related to the management of the anadromous salmonids in the Pacific-Northwest, especially within the Columbia River drainage. There is a long history of controversy on this issue among the states of Oregon, Washington and Idaho, as well as between these states and the several treaty-Indian tribes of the region. Various court decisions have addressed the subject of the treaty-Indians' right to harvest these fish but they have not, in my opinion, provided a satisfactory solution to an extremely complex problem. In a practical sense they have only established the courts as a superior management entity in a field requiring a specialized knowledge of the laws of nature rather than the laws of man. The simple fact that S.954 exists, and is before this Committee, is a manifestation of the frustrations felt by the thousands of non-Indian citizens who have a keen interest in the proper management and utilization of a valuable fishery resource!

This statement is intended to substantiate my contention that S.954 should be adopted by Congress. It is made by one citizen of the state of Idaho, but I feel it represents the perspective of all Idahoans concerned with this issue. I believe it is pertinent to note that I have served three years as President of the Idaho Wildlife Federation, six years as a member of the Idaho Fish and Game Commission including two years as Chairman, and that I am now entering my third year representing Idaho on the Pacific Fishery Management Council.

S.954 would prohibit the commercial use of steelhead. This is appropriate. In Idaho the commercial use of steelhead is prohibited for all except treaty-Indians. Populations of this once-plentiful, renewable fishery resource were headed toward extinction in the mid-1970's as a result, principally, of the many federal and private hydroelectric developments on the Columbia and Snake Rivers. There is no directed ocean harvest of steelhead by U.S. domestic fishermen. The extent of a possible foreign ocean harvest is unknown. As a result of the extremely low numbers of returning adult steelhead to Idaho waters, the sportfishing season for this species was closed in 1975. Since

then, limited steelhead sportfishing has been allowed based upon anticipated returns to Idaho waters as indicated by counts of fish passing Bonneville, Ice Harbor, and Lower Granite dams. By way of contrast, there has been no sportfishing for summer Chinook salmon in Idaho since 1964; and since 1974 there has been limited Idaho sportfishing on spring Chinook in only two years, 1977 and 1978. The importance of returning steelhead to Idaho fishermen and the businesses depending on them is obvious, especially in light of the non-existence of a Chinook salmon fishery.

In June 1984 the steelhead counts at Bonneville Dam indicated the largest return of these fish to the Columbia River since the inception of the counting system. These were the so-called "A-run" steelhead, bound for the Salmon River. B-run steelhead, from the Clearwater River, enter the Columbia in August. In anticipation of this record return, the Idaho Fish and Game Commission set an extremely liberal sport-harvest for the fall-1984/spring-1985 steelhead fishery, doubling the ten-fish bag limit of the 1983-1984 season. Unfortunately, these fish failed to appear in the Salmon River. There was essentially no harvest by Idaho sportsmen. Returns to the Pahsimeroi River hatchery were barely adequate to satisfy the egg requirements of that facility. However, the treaty-Indian gillnet fishery in the Columbia River above Bonneville Dam produced over 71,000 steelhead for sale on the open market. This is the largest Indian commercial harvest of upriver steelhead on record, almost two-and-one-half times the previous high of 31,000 fish recorded in 1977.

Obviously, there has been a record-setting quantity of acrimonious diatribe among all interested parties as to the cause of the disappearance of the Salmon River steelhead, class of 1984. I will not attempt to solve that question here. Rather, I would like to list some specific reasons why I believe steelhead should be given the protection offered by S.954.

1. The upriver steelhead bound for Idaho waters is a genetically unique, irreplaceable species. No other strain of steelhead has the ability to withstand rigors of a migratory journey which includes swimming up to 1000 miles from the spawning grounds of the upper Salmon River, over eight hydroelectric dams, through the lower Columbia estuary to the Pacific Ocean, and then returning over the same obstacles and distance to spawn.
2. The wild component of the upriver steelhead is protected by selective harvest regulations in Idaho; only hatchery-origin fish may be kept.
3. The value of wild anadromous fish, both salmon and steelhead, has previously been recognized by Congress through the passage of the Central Idaho Wilderness Act of 1980, Public Law 96-312, which designates substantial portions of the Salmon River as a wild and scenic river, precluding dam construction and banning dredge and placer mining, and thus protecting existing, available, natural spawning habitat.
4. Congress has taken other specific actions aimed at protecting, mitigating and enhancing the anadromous fish resources of the Columbia River system,

including authorization of the expenditure of federal funds. These include the Pacific Northwest Electric Power Planning and Conservation Act of 1980, the Salmon and Steelhead Conservation and Enhancement Act of 1980, and the Lower Snake River Fish and Wildlife Compensation Plan.

5. A significant amount of federal funding has been spent to improve fish passage conditions at federal dams on the Columbia River in order to reduce mortality of both downstream and upstream migrant fish.
6. Private funding has been provided by the Idaho Power Company to construct and operate anadromous fish hatcheries in mitigation of losses due to the construction of three hydroelectric dams on the Middle Snake River.
7. Commercial fishing for steelhead by non-Indians was banned in 1974. The northwest states regard the fish exclusively as a sportfish.
8. From 1977 to 1982, a court-ordered Columbia River Management Plan regulated Indian fisheries and restricted the commercial take of steelhead to an incidental harvest during salmon seasons.
9. The Columbia River Management Plan has not been renegotiated because the states and the tribes have been unable to reach agreement. Meanwhile, Indian gillnetting continues, targeting on steelhead through net mesh size adjustment.
10. Gillnetting is non-selective; it harvests wild and hatchery-origin fish indiscriminately.

Items 1 through 10 above are statements of fact.

Let me elaborate on a previous statement. The current precarious condition of anadromous salmonids in the Columbia River system is due principally to the presence of eight federally-funded hydroelectric facilities on the Columbia and Snake Rivers, one on the North Fork of the Clearwater River, and three private hydroelectric facilities on the middle-Snake River. In addition, habitat destruction or degradation through such activities as logging and mining, plus an ocean harvest which was essentially unregulated until the passage of the Magnuson Fishery Management and Conservation Act of 1976, have exacerbated the critical situation resulting from the dams. Treaty-Indian fishing has not been, and is not now a significant factor in the decline of anadromous fish populations, considering their once-plentiful numbers.

Why then should S.954 be passed?

First, it seems obvious that the long-standing arguments among the various state and federal management entities, and between these entities and the treaty-Indian tribes, will not soon go away. The courts will continue de facto management. This management will be based upon the concept of allowing a small number of treaty-Indians to harvest half of the fish in excess of spawning escapement goals for commercial sale, in addition to

their requirements for ceremonial and subsistence purposes. Perhaps this was equitable when the Indian population equaled or exceeded the non-Indian, at the time when the treaties were negotiated; but it is not equitable now and should not continue. Passage of this bill would remove steelhead from management by the courts, with harvest levels determined by biological data.

Next, the treaty-Indian gillnet harvest in the Columbia River takes place before the actual escapement of upriver spawners has been determined. Thus it is possible to overharvest certain runs of fish and not meet minimum spawning levels, placing future populations in jeopardy. In addition this downriver harvest, if excessive, places the full burden of conservation on the non-Indian sportsfishermen: The Indians harvest their share; the non-Indians, none. All of this has happened. Passage of S.954 would prevent it.

Considering the public funds which have been expended on dam-passage improvements and hatchery construction to restore and enhance steelhead populations, and considering the public funds which are used to support treaty-Indians through their reservations, it seems most ironic that they are the prime beneficiaries of the steelhead fishery. The non-Indians only pay the bills, but have a limited harvest opportunity. Since the economic survival of the treaty-Indians does not depend upon the sale of steelhead, why allow this practice to continue? In 1984 the Columbia River tribes sold over 71,000 steelhead at about \$1.10 per pound. Assuming an average fish of ten pounds, this sale produced less than one million dollars in revenue to those tribes. For contrast, consider the economic value of these same fish on the local economy, the stores, restaurants, motels, guides, and other businesses which derive their livelihood from fishermen and tourists. Data available from 1977 indicate that one fishing day had a value of almost \$51.00 for the local economy. In 1984 about 36,000 steelhead licenses were sold in Idaho. This means that if those fishermen fished only one day each, approximately \$1,836,000 was fed into the local economy using the 1977 value of \$51.00 per day. Obviously, that figure should be higher for 1984 and 1985. But since the lack of fish available for harvest was soon obvious, there was a significant decline in the number of fishermen, in sharp contrast to the fall-1983/spring-1984 season when ample fish produced large numbers of fishermen. It is difficult to estimate the total impact of the 1984 non-fishing season on the local economy in Idaho, but even using the conservative value from 1977 one lost day of fishing was worth almost twice the market value of the total Indian harvest of Columbia River steelhead! Taxpayers pay farmers not to farm; perhaps we should pay Indians not to fish. More appropriate, however, is passage of S.954 which would ban all commercial use of steelhead.

Although there are other valid reasons to adopt this bill, this letter is already too lengthy to discuss them. I would close, however, on what I consider the single most compelling reason to eliminate the commercial use of steelhead: preservation of the remaining stocks of wild fish. Gillnetting is indiscriminate; it harvests hatchery and wild fish alike. Considering the several acts of Congress intended to protect the wild anadromous fish and their habitat, as mentioned earlier, is it not folly to allow any harvest of those wild fish? I say it is. A supportive opinion on this issue is

Senator Mark Andrews

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June 17, 1985

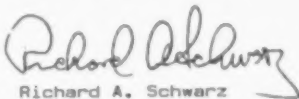
contained in a pamphlet published by the Columbia River Inter-tribal Fish Commission. I quote from a list of "How to Restore Columbia River Salmon and Steelhead" printed in that pamphlet:

"Natural Production. Increase naturally reproducing salmon and steelhead as the foundation of Columbia River fisheries because long-term species survival depends on wild populations. Managers must give wild fish priority when deciding which fish will escape ocean and inriver harvests."

Elimination of gillnetting would eliminate harvest of wild steelhead inriver, given the restrictions against the harvest of wild fish by sportfishermen. Treaty-Indian gillnetting in 1984 targeted steelhead, both hatchery and wild, in spite of the above quote. It would seem that only Congress, through passage of S.954, can protect the remaining populations of wild steelhead. That certainly is a worthy objective, and I urge you to do so.

Thank you for this opportunity to comment.

Sincerely,



Richard A. Schwarz

cc: Senator J. A. McClure
Senator S. Symms

Paul Turcotte
5918-220 PL SE
Issaquah, WA

July 4, 1985

The Honorable Mark Andrews
United States Senate
Senate Select Committee on
Indian Affairs

Dear Senator Andrews,

Thank you for this opportunity to express to you and your committee my feelings on SB 954, "A bill to Provide for additional Protection of Steelhead Trout as a national game fish".

There are three points that I make for your consideration, and they are, the Peril, the legacy, and the Constitution.

1. The Peril arises, as the dictionary defines this word, as the "exposure to the risk of being injured, destroyed, or lost".

Many biologists and others in the scientific community have been warning us for years that we must pay more attention to the subtle biological clues which govern these magnificent creatures.

Each species of anadromous fish because of their strong homing instincts and by their very nature can be classified as a distinct race, for any given river system, or stream.

In nature a particular race of fish is unique to its home stream, having evolved over thousands of years.

Steelhead Trout, because of their lower reproductive capability are placed at risk by any commercial netting, and as strange as it may sound, they are especially at risk in those areas where tribal hatcheries are releasing young steelhead into rivers or streams where wild/native runs are present.

The object of any commercial netting operation, in order for it to be Profitable, must be, to take all of the hatchery component of these runs. Any allowable Passage in this instance would be considered "wastage". Consequently the on going struggle to maintain adequate numbers of fish Past the commercial netting for both spawning escapement of wild/native fish and non-tribal fishing opportunity requires expensive and time consuming effort on the Part of the Washington State Department of Game.

This financial burden to the state is entirely borne by sport fishing licence buyers.

The concern as I see it comes when you ask yourself, "how much stamina over a long Period of time is going to be required,.... can we maintain the struggle"?

Any miscalculation that leads to the destruction of any of the wild/native runs would be a national disaster. Simply Put they would become extinct. This is the Peril.

2. Legacy, as defined in the dictionary, is "a bequest, something received from an ancestor, or from the Past".

The People of Washington took this action, in I believe 1934, when they voted to Provide Steelhead Trout game fish status, thereby removing them from commercial harvest. A legacy.

In 1974 Judge Boldt struck down this state law that had stood for forty years.

Allowing the commercial netting of Steelhead Trout by our tribal citizens is Probably the root cause of much of the anger which manifests itself in a seething silence which is further separating us.

All, would gain both economically and morally by returning the

Steelhead Trout to it's former status as a game fish.

This could be a major turning Point in the state of Washington by easing tensions.

By giving Steelhead Trout national game fish Protection we would be leaving to the future citizens of the United States something we could all be Proud of, hence, a legacy.

3. The Constitution, last but not least is Probably the most important consideration.

Judge Boldt knowingly or unknowingly returned to the People of Washington, the onerous and unconstitutional, "separate but equal" doctrine, in his interpretation of the treaties signed in 1854.

I believe that one day the United States Supreme Court will have to address this "separate but equal" question.

I hasten to add, that just because some of us disagree with how they fish and where they fish, does not mean that we don't care about our tribal citizens, because we do.

From the bottom of my heart I can say to you....

Black is beautiful, Brown is beautiful, Red is beautiful, We are all beautiful.

ONE COUNTRY, UNDER ONE CONSTITUTION, WITH ONE SET OF LAWS FOR EVERYONE.

Sincerely,



Paul Turcotte
5918-220 PL SE
Issaquah, WA 98027

Northern Illinois University 
DeKalb, Illinois 60115-2861

20 June 1985

Department of Biological Sciences
Department Office 815 753 1753
Faculty Phones 815 753 0433

Senator Mark Andrews
Senate Office Building
Washington, D.C. 20511

Dear Senator Andrews,

I have just learned of the existence of S. 954, a bill
to abrogate Indian treaty rights to harvest steelhead
for sale.

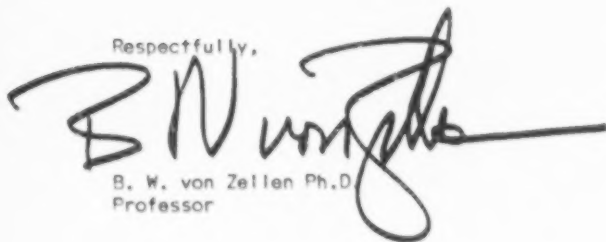
I strongly oppose enactment of S. 954!

Only weeks ago my wife and I visited the Makah and Quinault
reservations on the Olympic Peninsula of Washington, The EPA
in Oregon, and a fishery biologist in Oregon.

Biologists of the Washington State Department of Game
reported the largest catch of steelhead since 1979-80.
I have heard the Columbia River steelhead runs this
year are at record level.

A coalition of citizen and state groups are working things
out in the northwest. I believe S. 954 to be a unilateral
abrogation of a solemn treaty with native American people.

Respectfully,



B. W. von Zellen Ph.D.
Professor